

1077

No. 2915

United States 1077
1
Circuit Court of Appeals

For the Ninth Circuit.

Transcript of Record.
(IN TWO VOLUMES.)

CENTRAL CALIFORNIA CANNERIES COMPANY, a Corporation,
GRIFFIN & SKELLEY COMPANY, J. C. AINSLEY PACKING
COMPANY, ANDERSON-BARNGROVER MANUFACTURING
COMPANY, GOLDEN GATE PACKING COMPANY, J. F. PYLE
& SON, INCORPORATED, HUNT BROTHERS COMPANY, SUN-
LIT FRUIT COMPANY, a Corporation,

Appellants,

vs.

DUNKLEY COMPANY, a Corporation,

Appellee.

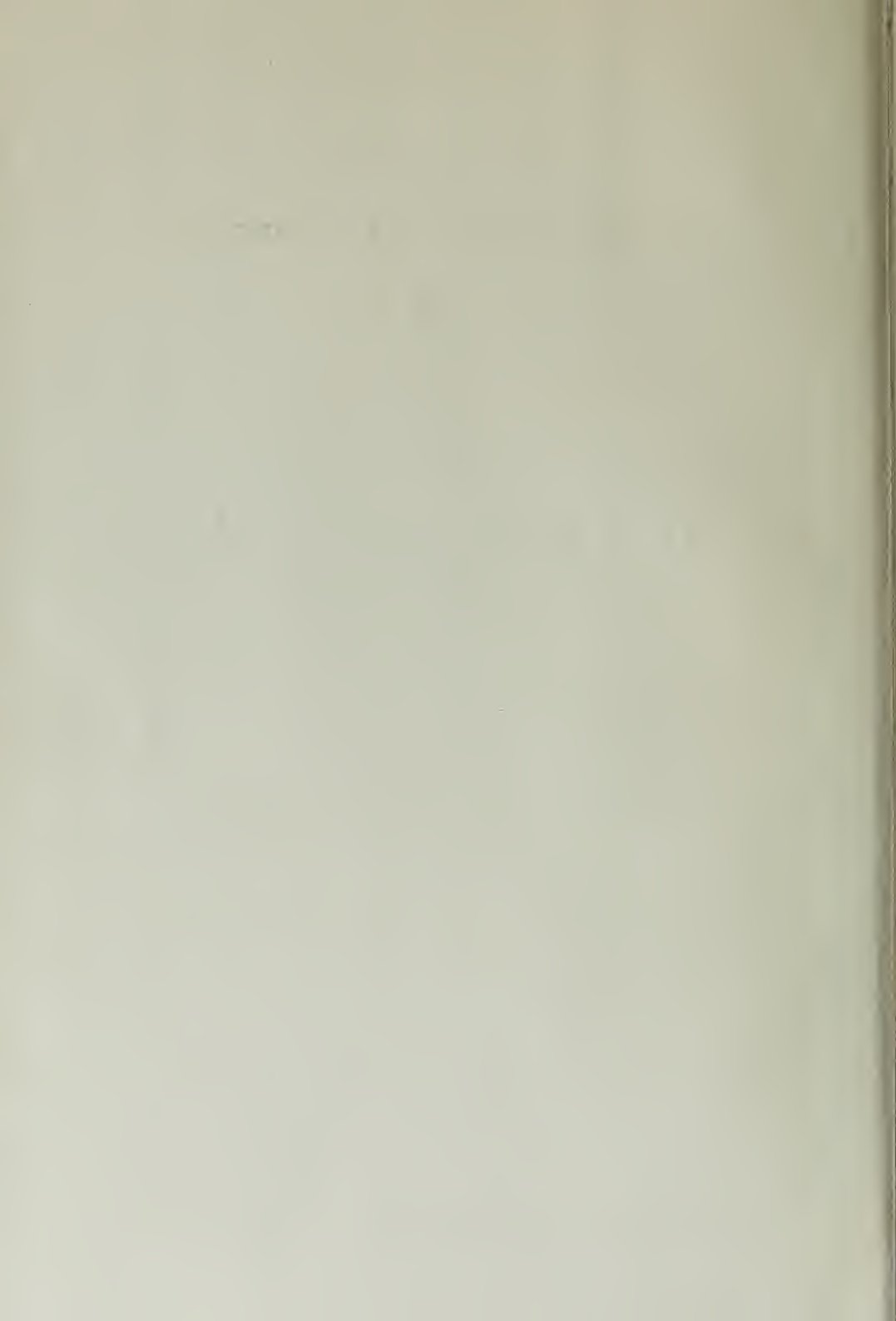
VOLUME I.
(Pages 1 to 448, Inclusive.)

Upon Appeals from the Southern Division of the United States
District Court for the Northern District of California,
Second Division.

Filed

JAN 22 1917

F. D. Monckton,
Clerk.



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Circuit Court of Appeals

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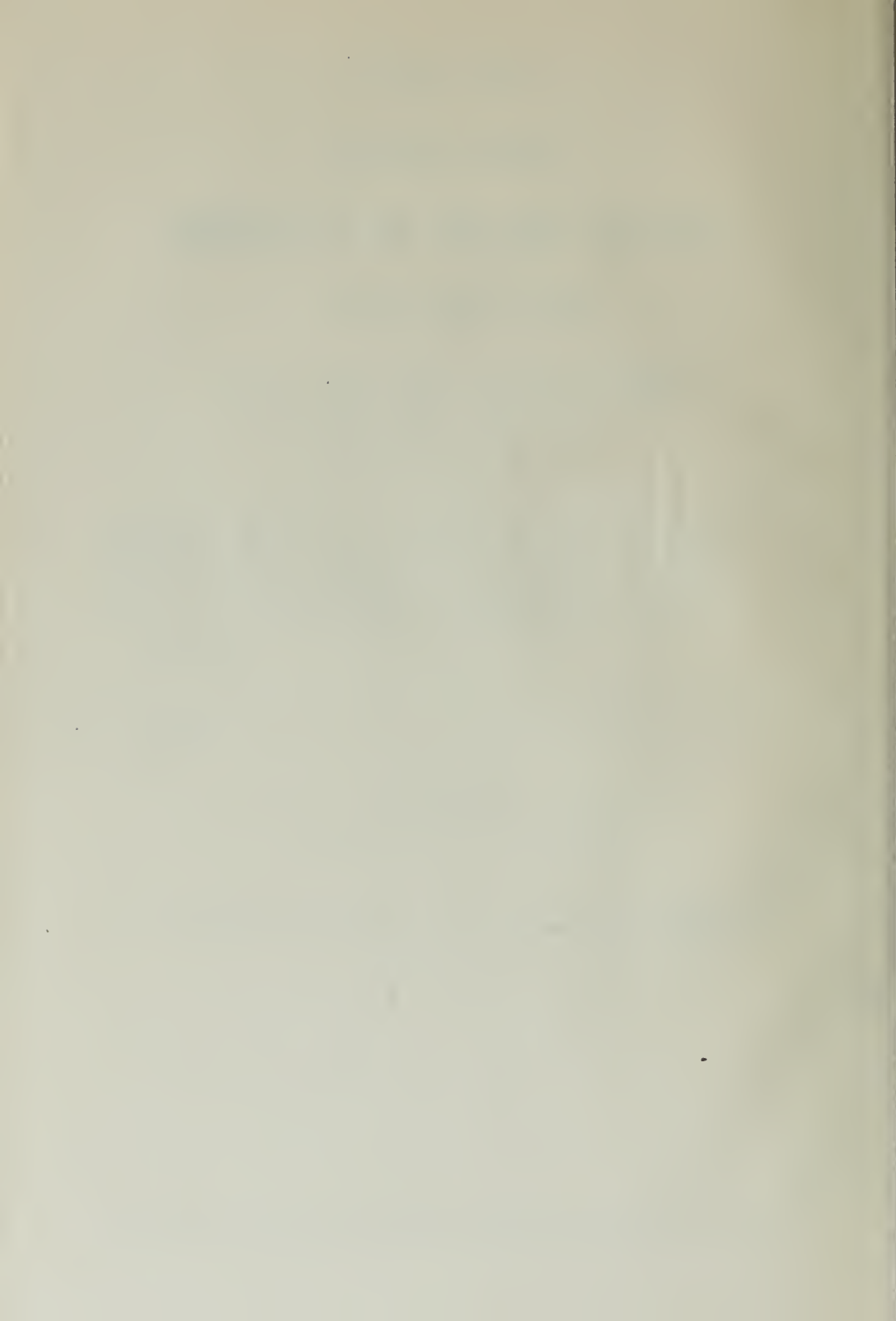
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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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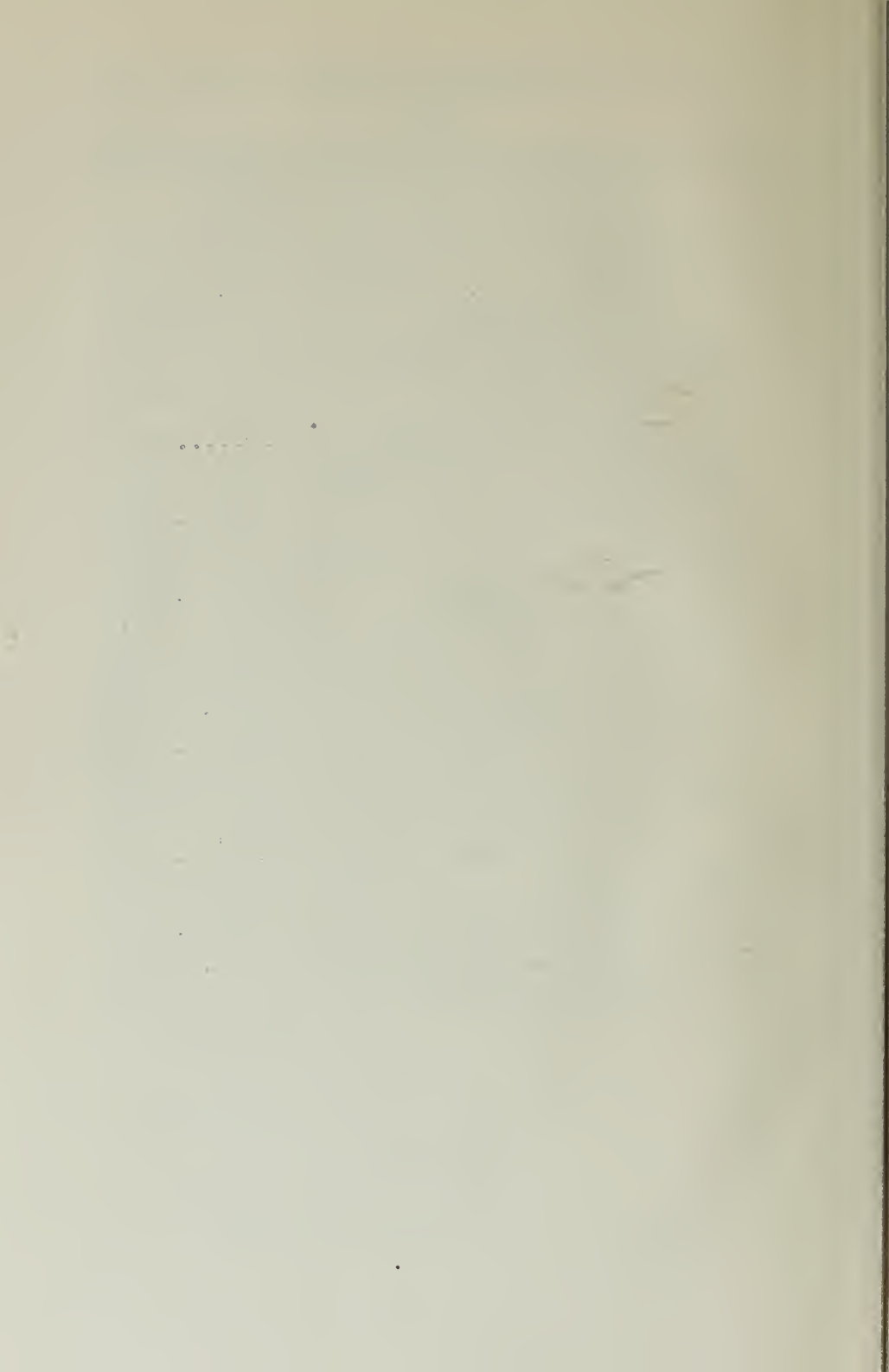
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*In the District Court of the United States in and for
the Northern District of California, Second Di-
vision.*

DUNKLEY COMPANY,

Plaintiff,

VS.

CENTRAL CALIFORNIA CANNERIES COM-
PANY,

Defendant.

**Bill of Complaint for Infringement of Patent No.
1,104,175.**

Now comes Dunkley Company, plaintiff in the above-entitled suit, and files this its bill of complaint against Central California Canners Company, defendant, and for cause of action alleges:

1. That the full name of the plaintiff is Dunkley Company, and during all the times hereinafter mentioned said plaintiff was and still is a corporation created under the laws of the State of Michigan and having its principal place of business at the city of Kalamazoo in the State of Michigan.

2. That the full name of the defendant is Central California Canners Company, and during all the times hereinafter mentioned said defendant was and still is a corporation created and existing under the laws of the State of California and having its principal place of business at the city and county of San Francisco, State of California.

3. That the ground upon which the Court's jurisdiction depends is that this is a suit in equity arising under the patent laws of the United States.

4. That heretofore, to wit, on and prior to November 29th, 1904, one Samuel J. Dunkley was the original and first inventor of a new and useful invention, to wit, a machine for peeling peaches and other fruit, and on that day made application to the Government of the United States for the issuance to him of letters patent therefor, and before the issuance of [1*] any patent therefor said Dunkley sold and assigned to the plaintiff herein the aforesaid invention and application, together with such letters patent as might be granted thereon.

5. That thereafter, to wit, on July 21, 1914, such proceedings were had and taken in the matter of said application that letters patent of the United States for said invention numbered 1,104,175, were granted, issued and delivered by the Government of the United States to the plaintiff, whereby there was granted to the plaintiff, its successors and assigns, the sole and exclusive right to make, use and vend the said invention throughout the United States of America and the territories thereof during the period of seventeen years from July 21st, 1914; that a more particular description of the invention patented in and by said letters patent will fully appear from the said letters patent themselves which are ready in court to be produced by the plaintiff.

6. That ever since the issuance of said letters patent plaintiff has been and still is the sole owner and holder thereof and of all the rights thereby granted.

7. That since the issuance of said patent plaintiff

*Page-number appearing at foot of page of original certified Transcript of Record.

has practiced the said invention by putting into use machines containing the same, and upon each of said machines has marked the word "patented" together with the date and number of said letters patent.

8. That since the issuance of said letters patent, in the Northern District of California and elsewhere, the defendant without the license or consent of the plaintiff has made and used and is now engaged in using machines for peeling peaches and other fruit, containing the invention patented in and by said letters patent, No. 1,104,175, and has thereby infringed upon the said letters patent; that by reason of the infringement aforesaid, defendant has realized profits and [2] plaintiff has suffered damages, but the amount of such profits and damages is unknown to plaintiff and can be ascertained only by an accounting.

9. That plaintiff has requested defendant to desist from infringing upon said letters patent and to account to the plaintiff for the damages suffered by plaintiff and the profits realized by the defendant from past infringement, but the defendant has failed and refused to comply with said request or any part thereof.

10. That the defendant threatens to continue the said infringement and unless restrained therefrom by this Court will continue the same, whereby plaintiff will suffer great and irreparable injury and damage, for which it has no plain, speedy or adequate remedy at law.

WHEREFORE, plaintiff prays:

I. That upon the filing of this bill a preliminary injunction be granted to plaintiff enjoining and re-

straining the defendant, its officers, agents, servants, attorneys and employees, *pendente lite*, from making, using or selling, or threatening, advertising or offering to make, use or sell any machine for peeling peaches or other fruit containing the invention patented in and by said letters patent, No. 1,104,175 and from further infringing upon said letters patent either directly or indirectly or in any manner whatever.

II. That upon the final hearing the defendant herein, its officers, agents, servants, attorneys and employees, and each of them, be permanently and finally enjoined and restrained from making, using or selling, or threatening, advertising or offering to make, use or sell any machine for peeling peaches or other fruit containing the invention patented in and by said letters patent, No. 1,104,175, and from infringing either directly or indirectly or in any manner whatever, and [3] also from aiding, abetting or contributing to any such infringement, and that the writ of injunction be issued out of and under the seal of this court enjoining the defendant, its officers, agents, attorneys, servants and employees, as aforesaid.

III. That it be ordered, adjudged and decreed that plaintiff have and recover from defendant the profits realized by the defendant and the damages sustained by the plaintiff from and by reason of the infringement aforesaid, together with costs of suit, and such other and further relief as to the Court

may seem proper and in accordance with equity and good conscience.

DUNKLEY COMPANY,
By S. J. DUNKLEY,
Secretary.

JOHN H. MILLER,
Solicitor and Counsel for Plaintiff,
723-6 Crocker Building,
San Francisco,
California. [4]

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

Samuel J. Dunkley, being duly sworn, deposes and says that he is the secretary of the plaintiff mentioned in the within entitled action; that he has read the foregoing bill of complaint and knows the contents thereof; that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters, that he believes it to be true.

SAMUEL J. DUNKLEY.

Subscribed and sworn to before me this 6th day of August 1915.

[Seal]

R. B. TREAT,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: No. 201. Filed Aug. 6, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[5]

*In the District Court of the United States in and for
the Northern District of California, Second Di-
vision.*

No. 201.

DUNKLEY COMPANY,

Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES COM-
PANY,

Defendant.

**Answer of Central California Canneries, Defendant
in the Above-entitled Suit, to the Bill of Com-
plaint of Dunkley Company, Plaintiff Therein.**

Now comes Central California Canneries, defend-
ant, incorrectly sued herein as Central California
Canneries Company, and answering the bill of com-
plaint herein admits, denies and alleges as follows:

1. Answering paragraph 1 of said complaint, de-
fendant denies that the full name of plaintiff is
Dunkley Company or that, during all or at any of
the times mentioned in said complaint, plaintiff was
or is a corporation created under the laws of the
State of Michigan or of any other state or at all or
having its principal place of business at the city of
Kalamazoo or at any other place.

2. Answering paragraph 2 of said complaint, de-
fendant denies that its full name is Central Cali-
fornia Canneries Company, and alleges that its full
name is Central California Canneries.

3. Answering paragraph 3 of said complaint, de-
fendant denies that this is suit properly cognizable in

a court of [6] equity and in that behalf alleges that said complaint does not state facts sufficient to constitute a valid cause of action in equity or to confer jurisdiction on this court as a court of equity in this that it does not appear in said complaint that the validity of the letters patent sued on herein has ever been adjudicated in an action at law or acquiesced in by the public or anyone.

4. Answering paragraph 4 of said complaint, defendant denies that on or prior to November 29, 1904, or at any other time, one Samuel J. Dunkley was the original or first or any inventor of a new or useful invention, to wit, a machine for peeling peaches, or that on said day or at any other time he made application to the Government of the United States for the issuance to him of letters patent therefor or that before the alleged issuance of any patent therefor he sold or assigned to the plaintiff the aforesaid alleged invention or application with any letters patent that might be granted thereon.

5. Answering paragraph 5 of said complaint, defendant denies that thereafter, to wit, on July 21, 1914, or at any other time, such proceedings were had or taken in the matter of said alleged application that letters patent of the United States for said alleged invention numbered 1,104,175, were granted, or issued or delivered by the Government of the United States to the plaintiff and denies that thereby or otherwise or at all there was granted to the plaintiff or to its successors or assigns, the sole or exclusive or any right to make or use or vend the said alleged invention throughout the United States of America or the territories thereof or at all or during the

period of seventeen years from July 21, 1914, or during any other period or at all; denies that a more particular or any description of the alleged invention alleged to be patented in or by said alleged letters patent will fully or otherwise appear from said [7] alleged letters patent.

6. Answering paragraph 6 of said complaint, defendant denies that ever since the alleged issuance of said letters patent or at any time plaintiff has been or still is the sole or any owner or holder of said alleged letters patent or of all or of any of the alleged rights alleged to be thereby granted.

7. Answering paragraph 7 of said complaint, defendant denies that plaintiff or anyone has practiced the said alleged invention by putting into use any machine containing the same or otherwise, or at all, and denies that upon each or any of said alleged machines plaintiff has marked the word "patented" or the alleged date or number of said alleged letters patent.

8. Answering paragraph 8 of said complaint, defendant denies that since the issuance of said letters patent, in the Northern District of California or elsewhere or at any place, without the license or consent of the plaintiff or otherwise or at all, defendant has made or used or is now engaged in using any machine for peeling peaches or other fruit, or any other machine or device, containing the alleged invention alleged to be patented in or by said alleged letters patent, No. 1,104,175 and defendant denies that it has at any time or place infringed upon the said alleged letters patent; further answering, defendant denies that by reason of said alleged in-

fringement or any infringement it has realized any profits or plaintiff has suffered any damages or that plaintiff has suffered any damages by reason of any act of defendant; denies that said alleged profits or damages can be ascertained by accounting or otherwise.

9. Answering paragraph 9 of said complaint, defendant denies that plaintiff has requested defendant to desist from any alleged infringement upon said alleged letters patent or to account to the plaintiff for any alleged damages alleged to have [8] been suffered by plaintiff or any alleged profits alleged to have been realized by the defendant by reason of any alleged reason of any alleged past infringement and alleges that plaintiff has never made any request of defendant.

10. Answering paragraph 10 of said complaint, defendant denies that it threatens to continue the said alleged or any infringement or that, unless restrained by this Court, or otherwise, it will continue any alleged infringement and in that behalf defendant alleges it has never infringed upon said letters patent and denies that plaintiff will suffer great or irreparable or any injury or damage by reason of any act of defendant and denies that plaintiff has no plain, speedy or adequate remedy at law for any alleged wrongs alleged to have been suffered by it.

11. For a further and separate defense, defendant alleges that the said alleged invention sought and attempted to be patented and claimed in and by said alleged letters patent is of no utility whatever and that the same has never been put into practical use by anyone and cannot be successfully embodied in

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a practical machine and any machine containing or embodying same would be impracticable, without utility and worthless.

12. For a further and separate defense, defendant alleges that by reason of the state of the prior art existing at the time of the said alleged invention by the said Dunkley, the device described and claimed in and by said alleged letters patent was not an invention and did not require or involve an exercise of the inventive faculty for its production, for which reason said alleged letters patent are null, void and of no effect.

13. For a further and separate defense, defendant alleges that for the purpose of deceiving the public the description [9] and specification filed by the said Dunkley in the United States Patent Office, upon which the said alleged letters patent were granted, were made to contain less than the whole truth relative to his said alleged invention or discovery and more than was necessary to produce the desired effect.

14. For a further and separate defense, defendant alleges that the said Dunkley was not the original, or first or any inventor or discoverer of any material or substantial part of the alleged invention or machine alleged to be patented in and by said alleged letters patent.

15. For a further and separate defense, defendant alleges that said alleged letters patent No. 1,104,175 are null and void for the reason that the subject matter now disclosed or claimed in and by said alleged letters patent is substantially different from any subject matter or thing originally disclosed;

indicated, suggested or described in the alleged application for said letters patent as originally and first filed in the United States Patent Office and prior to the unlawful amendment thereof and the said subject matter of said letters patent and every material and substantial part thereof was unknown to the said Dunkley at the time of the filing of the said original application; and that the specification and claims in said original application, as filed, were unlawfully expanded during the prosecution thereof in an attempt to have them disclose and cover improvements, devices, mechanisms and principles and modes of operation which had not been created, devised or discovered by the said Dunkley and which were unknown to him at the time of the filing of said original application and of which he gained knowledge and information from others after the filing of his said application and which he attempted to cover and claim by the said unlawful expansion of his original claims, specification and application by the said insertion therein of new matter and said Dunkley and [10] plaintiff herein have unreasonably neglected to file a disclaimer of the material and substantial parts of said subject matter so claimed and of which said Dunkley was not the original, first or any inventor.

16. And for a further and separate defense, defendant alleges that plaintiff does not come into this court of equity with clean hands but on the contrary has been guilty of acts and conduct of such an iniquitous character as to disentitle it to any relief in a court of equity; and in that behalf defendant alleges that, prior to bringing any suit or action for

the alleged infringement of said letters patent, plaintiff knew that the California Fruit Canners Association, a corporation organized and existing under the laws of the State of California and having its principal place of business at the city and county of San Francisco, in said State, and its officers and employees possessed knowledge of the public use in the United States of America of said alleged invention of the said Dunkley for a period of more than two years prior to the said alleged date of the application for said letters patent and plaintiff also knew prior to the commencement of any such suit or action that said alleged invention had been publicly used in the State of California by the said California Fruit Canners Association for a period of more than two years prior to the filing of said application for said letters patent; that for the purpose of preventing said prior uses being proved or established by way of defense in any action or suit thereafter brought for the infringement of said letters patent and for the purpose of suppressing any and all testimony and information relative to such prior uses and for the purpose of preventing any party thereafter sued for the alleged infringement of said letters patent gaining or securing information or data sufficiently accurate and reliable to warrant and justify said prior uses being set up by way of [11] defense to any such suit and generally for the purpose of making it as difficult as possible for anyone, so sued, to establish or prove said prior uses by way of defense, plaintiff made and entered into an agreement with said California Fruit Canners Association

whereby and under the terms of which said California Fruit Cannery Association was granted a license under said letters patent for the remainder of the term thereof solely in consideration of said California Fruit Cannery Association agreeing not to directly or indirectly assist anyone in defending any suit or action brought for the alleged infringement of said letters patent and not to voluntarily give or furnish or permit any of its officers or employees to give or furnish to any party, sued for the alleged infringement of said letters patent, any information or data relative to or concerning any use of said alleged invention more than two years prior to the alleged filing of the application for said letters patent and prior to said Dunkley's alleged discovery of said invention or relative to or concerning the impracticability of any machine built in accordance with the disclosure of said letters patent and said California Fruit Cannery Association has heretofore kept and performed and is now keeping and performing the terms and conditions of said agreement.

Defendant alleges that by reason of the foregoing facts and circumstances, plaintiff does not come into court with clean hands and it would be contrary to the course and principles of equity jurisprudence to allow it to maintain this suit.

17. For a further and separate defense, defendant alleges that said Dunkley and plaintiff surreptitiously and unjustly obtained said letters patent in suit for that which in fact was first invented by another, to wit, Hermanus A. Beekhuis, who resides in Hanford, Kings County, California, and who at all times was using reasonable diligence in adapting

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and perfecting the same [12] and the said Hermanus A. Beekhuis was the original and first inventor and discoverer of the said alleged invention and subject matter disclosed in said letters patent in suit, and on May 25, 1904, the said Beekhuis filed his application in the United States Patent Office for United States letters patent thereon and thereafter, to wit, on September 3, 1907, United States letters patent No. 864,944 were granted on said application and issued to California Fruit Canners Association as the assignee of the said Beekhuis.

18. For a further and separate defense, defendant alleges that the said Dunkley and plaintiff surreptitiously and unjustly obtained said letters patent in suit for that which, in fact, was first invented by another, to wit, Cipriano D. Monte, now deceased, who, at the time of making said invention, resided at the city and county of San Francisco, State of California, and who, at all times, was using reasonable diligence in adapting and perfecting the same and the said Monte was the original and first inventor and discoverer of the said alleged invention and subject matter disclosed in the letters patent in suit and on February 23, 1907, the said Monte filed his application in the United States Patent Office for letters patent thereon and thereafter, to wit, on June 25, 1907, United States letters patent No. 858,095 were granted upon said application and issued to Virginia J. Monte, Administratrix of said Cipriano D. Monte, deceased.

19. For a further and separate defense, defendant alleges that the said Dunkley and plaintiff sur-

reptitiously and unjustly obtained said letters patent in suit for that which, in fact, was first invented by another, to wit, G. E. Grier, who at the time of making said invention resided and who now resides in Pasadena, Los Angeles County, California, and who at all times was using reasonable diligence in adapting and perfecting the [13] same and the said G. E. Grier was the original and first inventor of the invention and subject matter disclosed in the letters patent in suit and of every material and substantial part thereof and long prior to the alleged date of the alleged invention thereof by the said Dunkley and long prior to the filing of the application for the letters patent in suit the said Grier made, sold and publicly used, at said city of Pasadena, in Los Angeles County, State of California, United State of America, machines embodying and each of which embodied said alleged invention and every material and substantial part thereof and said public use of each of said machines was successful and on a commercial scale.

20. For a further and separate defense, defendant alleges that prior to the alleged invention by said Dunkley of the alleged invention described and claimed in and by the letters patent in suit and more than two years prior to the filing of the application for said letters patent, the said alleged invention and every material and substantial part thereof, was known to and had been and was in public use and was being publicly used by each of the following named persons, whose respective residences and the respective places where such prior knowledge and

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use was had by them, are as follows:

Used at San Jose, Santa Clara County, State of California, by J. F. Pyle & Son, a copartnership consisting of John F. Pyle, Frank G. Pyle and Harry T. Pyle, each of whom resides in said city of San Jose.

Used at San Jose, Santa Clara County, State of California, by John F. Pyle, Frank G. Pyle and Harry T. Pyle, each of whom resides in said city of San Jose.

Used in Santa Clara County, State of California, by J. W. Anderson, who resides on Alum Rock Ave., Santa Clara County, California. [14]

Used at Fresno, Fresno County, State of California, by George W. Meade, who resides in said city of Fresno.

Used in Fresno County, California by E. R. Shaw, who resides in San Jose, California.

Used at or near Pomona, California, by G. H. Waters, who resides at said city of Pomona.

Used at Campbell, Santa Clara County, California, by George W. Campbell, who resides in San Jose, California.

Known to and used by J. C. Ainsley and W. S. Shelly at Campbell, Santa Clara County, California, and each of said persons resides at said town of Campbell.

Used at Pasadena, California, by G. E. Grier, who resides at said city of Pasadena.

Used at Pasadena, California, by Pasadena Canning Company, a firm consisting of E. A. Taylor and G. E. Grier, each of whom resides in Pasadena and

each of whom had such prior knowledge at said city of Pasadena.

Used at Ontario, California, by California Fruit Company of Ontario.

Used at Ontario, California, by Vernon E. Campbell, who resides in Fresno, California, and who had knowledge of such use at Ontario, California.

Used at Los Angeles, California, by East Side Canning Company of Los Angeles.

Used at Anaheim, California, by Orange County Preserving Company of Anaheim, California.

Used at Los Angeles, California, by California Fruit Cannery Association, a California corporation having its principal place of business at San Francisco, California.

Used at Chico, Marysville, Yuba, Sacramento, Stockton, Vorden, San Jose, Santa Rosa, Milpitas, San Leandro, Visalia, Hanford and San Francisco, all in California, by said California [15] Fruit Cannery Association.

Used at Healdsburg, California, by the firm of Miller & Hotchkiss.

Used at Healdsburg, California, by W. J. Hotchkiss, who resides in San Francisco, California, and who had knowledge of such use at Healdsburg.

Used at San Jose, Santa Clara County, California, by W. C. Anderson, who resides in San Jose and who had knowledge of such use at San Jose.

Used at the city of Fresno, Fresno County, California, by C. J. Vernon, who resides in Fresno and who had knowledge of such use at Fresno.

Used at Healdsburg, California, by L. H. Stewart,

18 *Central California Canneries Company et al.*

who resides in Sacramento, California, and who had knowledge of such use at Healdsburg.

Used at Emeryville, California, by F. B. Hood, Canning Company of Emeryville, California.

Used at Emeryville, California, by Frank Hood, who resides at Emeryville, California, and who had knowledge of such use at Emeryville.

Used by and known to Kemper B. Campbell at Ontario, California, and said Campbell resides in the City of Los Angeles, California.

Used by and known to E. H. Kennedy at Los Angeles, Pasadena and Ontario, California, and the said Kennedy resides in Los Angeles, California.

Known to and used by William Finley at Pasadena, California, and said Finley resides in Los Angeles, California.

21. For a further and separate defense, defendant alleges that prior to the alleged invention by the said Dunkley of the alleged invention described and claimed in the letters patent in suit, and more than two years prior to the filing of the application [16] for said letters patent, the said alleged invention and machines embodying the same were on public sale and were being publicly sold at the City of San Jose, Santa Clara County, California, by the Anderson Prune Dipper Company, a California corporation, having its principal place of business at said City of San Jose.

22. For a further and separate defense, defendant alleges that the said Dunkley was not the original, first or any inventor or discoverer of any material or substantial part of the invention described and claimed in the letters patent in suit but long

prior to the alleged invention thereof by the said Dunkley and more than two years prior to the filing of the application for said letters patent, the same and every material and substantial part thereof had been shown, described and patented in and by the following letters patent of the United States, to wit:

No. of Patent.	Date of Patent.	Patentee.
517,566	April 3, 1894	Eyre & Hopkins
759,773	May 10, 1904	J. E. Trimble
765,081	July 12, 1904	E. F. B. Kenyon
757,186	April 12, 1904	R. I. Fancher
746,531	December 8, 1903	W. J. Latchford
740,441	October 6, 1903	E. J. Kessler
739,531	September 22, 1903	H. M. Barngrover
731,092	June 16, 1903	John Baker
719,617	February 3, 1903	James P. Scovill
719,616	February 3, 1903	“ “ “
690,005	December 31, 1901	Anderson & Swink
610,377	September 6, 1898	William C. Anderson
573,769	December 22, 1896	C. Duckworth
549,097	November 5, 1895	J. Baker
501,613	July 18, 1893	J. B. Foote
372,987	November 8, 1887	C. Robeson [17]
496,023	April 25, 1893	S. C. Warner
494,463	March 28, 1893	J. D. Cox
448,895	March 24, 1891	T. Van Kannel
259,110	June 6, 1882	W. Ducker
772,441	October 18, 1904	A. Taplin
746,530	December 8, 1903	W. J. Latchford
734,284	July 21, 1903	Fred Stebler

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697,272	April 8, 1902	Clarence Plummer
678,328	July 9, 1901	J. E. Bancroft
665,201	January 1, 1901	Fay & Crawford
		J. M. Baker
616,284	December 20, 1898	V. A. Chalker
		H. G. Baker &
		L. V. Ferguson
548,341	October 22, 1895	J. C. Wilson
528,195	October 30, 1894	A Warr
513,640	January 30, 1894	Huether & Gross
511,709	December 26, 1893	Ida L. McDermett
508,860	November 14, 1893	D. E. Barton
459,337	September 8, 1891	Strong & Cotte
464,631	December 8, 1891	L. Cunningham
448,895	March 24, 1891	Stotz & Heusch
354,492	December 14, 1886	T. Van Kannell

22. For a further and separate defense, defendant alleges that said Dunkley and plaintiff surreptitiously and unjustly obtained said letters patent in suit for that which, in fact, was first invented and discovered by another, to wit, Antonio Cerruti, who resides in the city of San Francisco, California, and who, at all times, was using reasonable diligence in adapting and perfecting the same and the said Cerruti was the original and first inventor of the said alleged invention disclosed in said letters patent in suit and on August 4, 1904, the said Cerruti filed his application in the United States Patent Office for letters patent thereon and thereafter, to wit, on August 15, [18] 1905, United States letters patent No. 797,171 were granted and issued to him on said application.

WHEREFORE, defendant prays judgment that the bill of complaint herein be dismissed and costs awarded to the defendant.

CENTRAL CALIFORNIA CANNERIES.

By FREDERICK S. LYON,

WM. K. WHITE,

Its Solicitors and Counsel.

WM. K. WHITE,

FREDERICK S. LYON,

Solicitors and Counsel for Defendant.

Service of the within answer admitted this 14th day of October, A. D. 1915.

JOHN H. MILLER,

Solicitor for Plaintiff.

[Endorsed]: Filed Oct. 14, 1915. Walter B. Mal-
ing, Clerk. [19]

*In the District Court of the United States in and for
the Northern District of California, Second Divi-
sion.*

No. 201.

DUNKLEY COMPANY,

Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES COM-
PANY,

Defendant.

**Stipulation that Uncertified Copies of Patents May
be Introduced in Evidence, etc.**

IT IS HEREBY STIPULATED AND AGREED
by and between the parties to the above-entitled suit
that uncertified printed Patent Office copies of

22 *Central California Canneries Company et al.*

United States letters patent may be introduced in evidence and used in the said suit with the same force and effect as though originals or certified, and further that the date of application for each of said patents appearing therein shall be deemed and considered as proof of and as the filing date of the application for said patent.

JOHN H. MILLER,
Solicitor for plaintiff.

F. S. LYON and

WM. K. WHITE,
Solicitors for Defendant.

Dated December 15, 1915.

[Endorsed]: Filed Dec. 16, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [20]

*In the District Court of the United States in and
for the Northern District of California, Second
Division.*

DUNKLEY COMPANY,

Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES COMPANY (In Equity No. 201), GRIFFIN & SKELLEY COMPANY (No. 202), J. C. AINSLEY PACKING COMPANY (No. 205,) ANDERSON-BARNGROVER MANUFACTURING COMPANY (No. 206), GOLDEN GATE PACKING COMPANY (No. 209), J. F. PYLE & SON, INC. (No.

210), HUNT BROTHERS COMPANY (No.
211), SUNLIT FRUIT COMPANY (No.
212),

Defendants.

Stipulation as to Certain Facts, etc.

IT IS HEREBY STIPULATED AND AGREED, by each and all of the above-named parties in the above-named suits, that all of said suits may be heard and tried upon the same testimony and proofs and said testimony and proofs shall be deemed taken and introduced in each and all of said suits, it being understood that no testimony or proof, deemed by the Court to be relevant or material to the issues in any one of said suits [21] shall be excluded by reason of being irrelevant or immaterial in respect to the issues in any other of said suits.

It is further agreed that the said taking of said testimony and the introduction of said proofs shall commence in the above-entitled court on March 28, 1916, and thereafter be proceeded with in accordance with the orders of the above-entitled court.

It is further stipulated and agreed that, prior to the commencement of this suit and subsequent to July 21, 1914, within the Northern District of California, each of the above-named defendants either used or made or sold either the type of apparatus and instrumentalities shown and illustrated in the annexed drawing marked Exhibit "A" or the type of apparatus and instrumentalities shown and illustrated in the annexed eight photographs numbered 1 to 8, inclusive, and in the annexed drawing, all of which are marked Exhibit "B," it being understood

and agreed, however, that in the event of an accounting being ordered by an interlocutory decree entered in any of said suits, the particular apparatus either made or used or sold by the defendant therein, shall be proved, on said accounting, by the plaintiff, and the recovery of damages or profits therein be based upon the manufacture, sale or use of said particular apparatus so proved to have been either made or used or sold by the defendant in said suit.

It is further stipulated and agreed that plaintiff, in making out its respective *prima facie* cases in said suits, shall call, as a witness on its behalf, a duly qualified witness, who shall be examined by plaintiff's counsel as to any similarities or differences between each of said two types of apparatus and instrumentalities, and the apparatus and instrumentalities disclosed [22] in the Dunkley patent in suit and covered by the respective claims thereof charged herein to have been infringed.

It is further stipulated and agreed that in the event that the respective decrees in said suits are in favor of the respective defendants therein and for the recovery from plaintiff of the costs and disbursements of said defendants, then and in such event, all items of disbursement, including witness fees and mileage, shall be taxable in each and all of said suits but only one payment of such items shall be required of plaintiff and such parts of any such judgments for costs and disbursements shall, to that extent, be considered as joint in favor of all the said defendants and against the plaintiff and all its sureties on the respective bonds for costs heretofore filed in said suits.

It is further stipulated and agreed that plaintiff was and is a corporation as alleged in the bill of complaint herein.

(Signed) JOHN H. MILLER,

(Signed) FRED L. CHAPPELL,

Solicitors for Plaintiff.

(Signed) FREDERICK S. LYON,

(Signed) WILLIAM K. WHITE,

Solicitors for Defendants.

(Here follows exhibits "A," "B," "B-1," "B-2," "B-3," "B-4," "B-5," "B-6," "B-7," "B-8," "B-Drawing.")

[Endorsed]: Filed March 28, 1916. Walter B. Maling, Clerk.

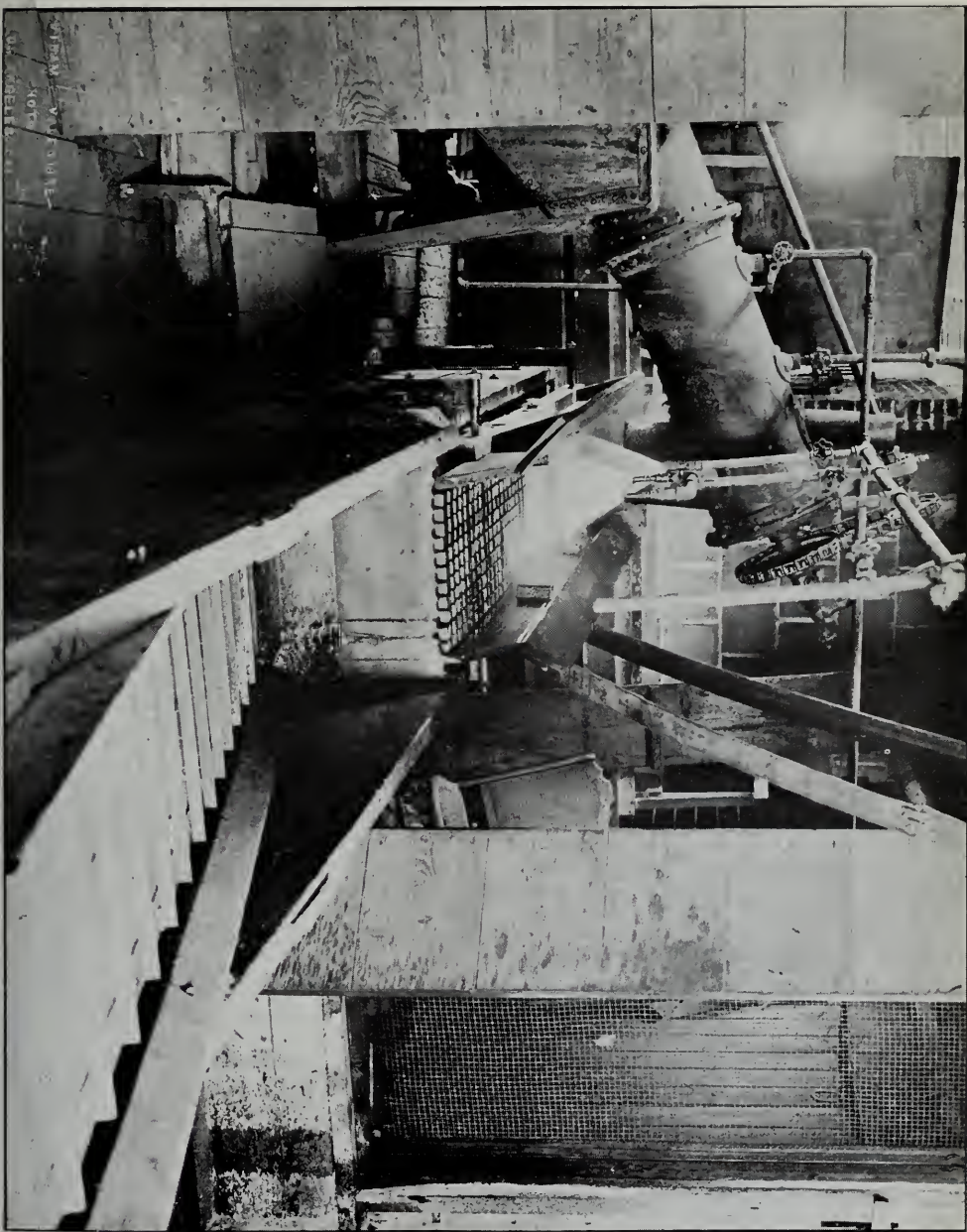
Exhibits A, B-1, B-2, B-3, B-4, B-5, B-6, B-7, B-8, B, Drawing follow. [23]

Exhibit A

- 1. COUNTRY OF ORIGIN: INDIA
- 2. NUMBER OF EMPLOYEES: 1000
- 3. TYPE OF BUSINESS: MANUFACTURING
- 4. INDUSTRY: TEXTILES
- 5. PRODUCT: CLOTHING
- 6. MARKET: EXPORT AND DOMESTIC
- 7. FINANCIAL STATEMENT: PROFITABLE
- 8. MANAGEMENT: GOOD
- 9. REPUTATION: GOOD
- 10. RISK: LOW



Exhibit B-1.



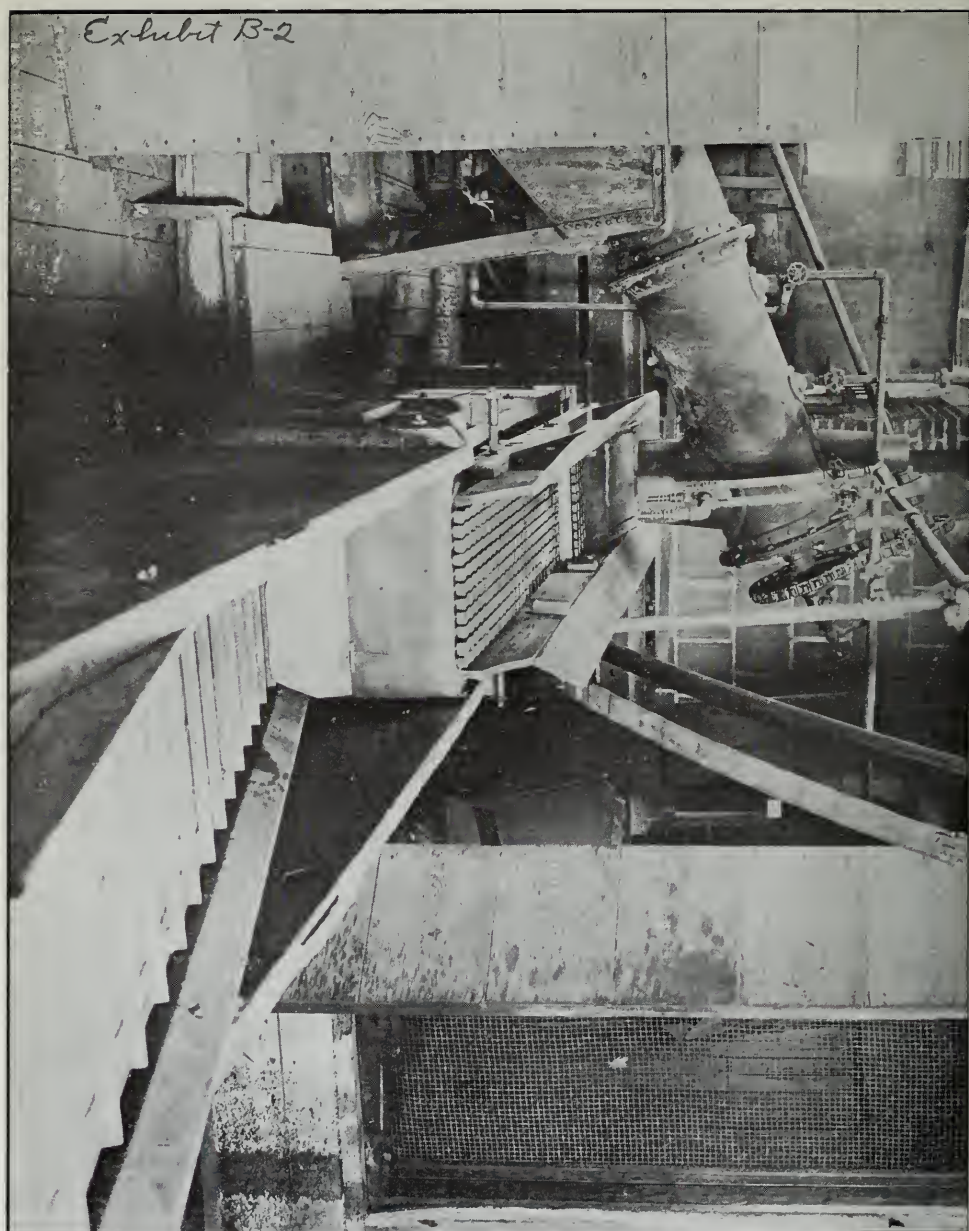
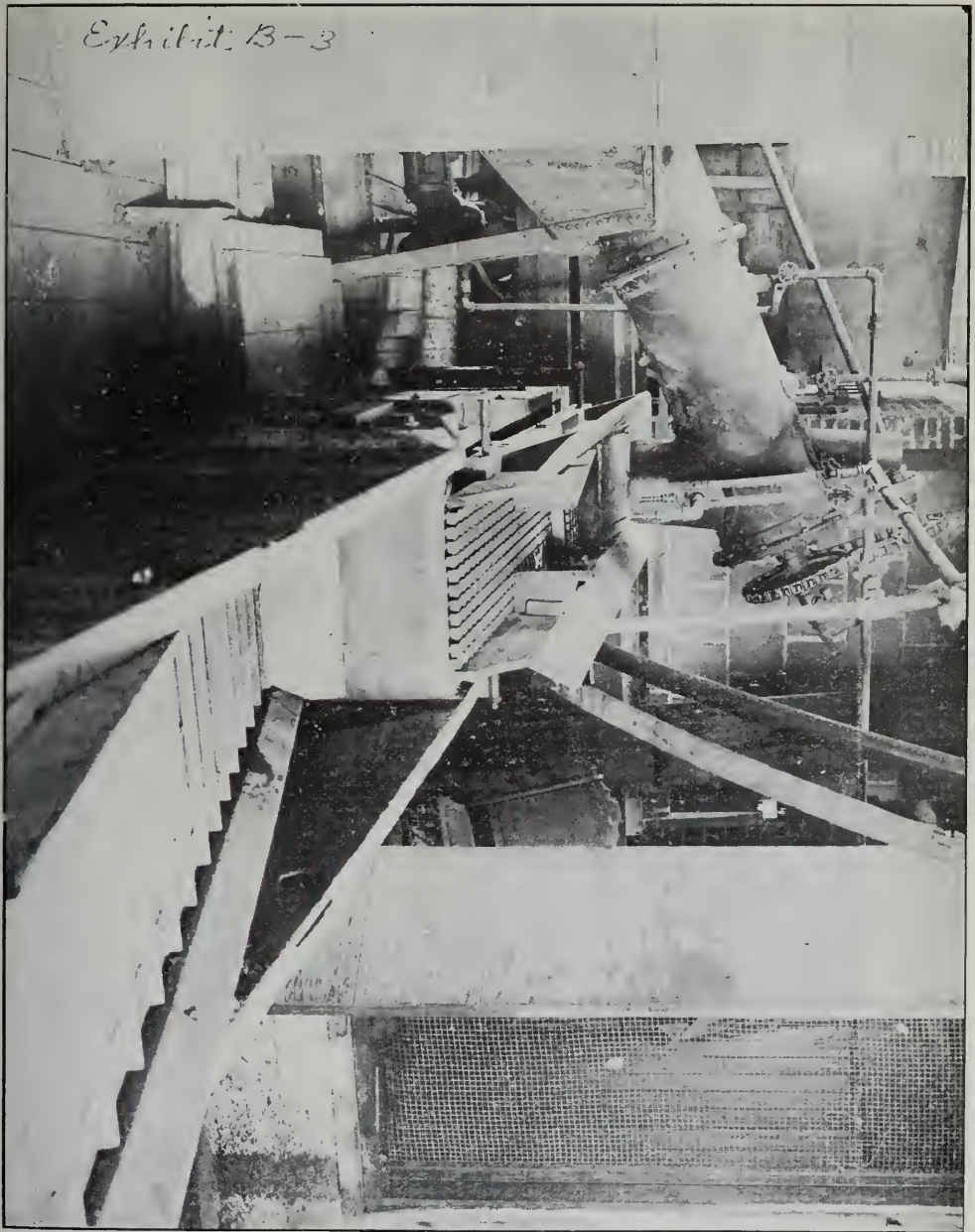


Exhibit B-3



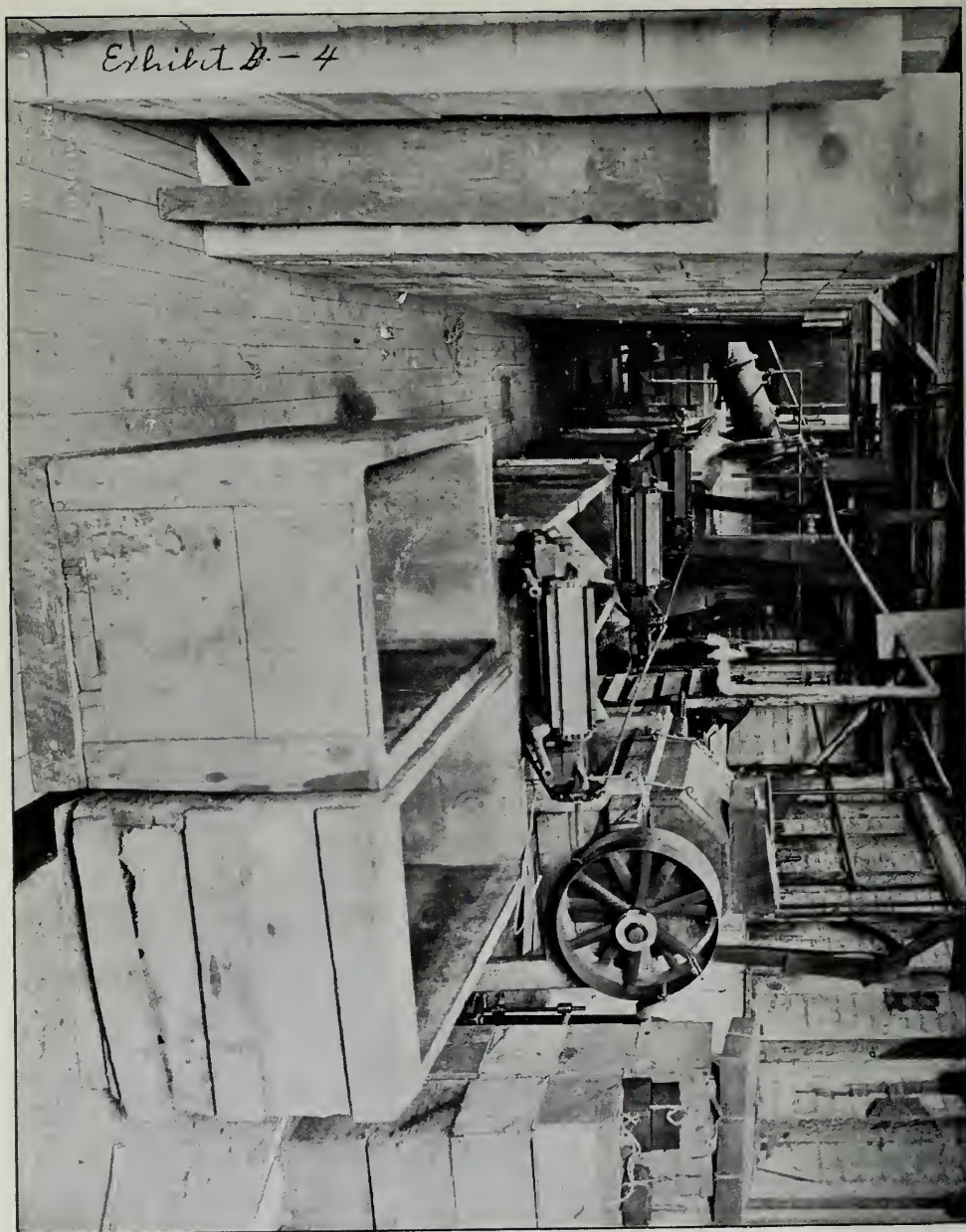


Exhibit B-5

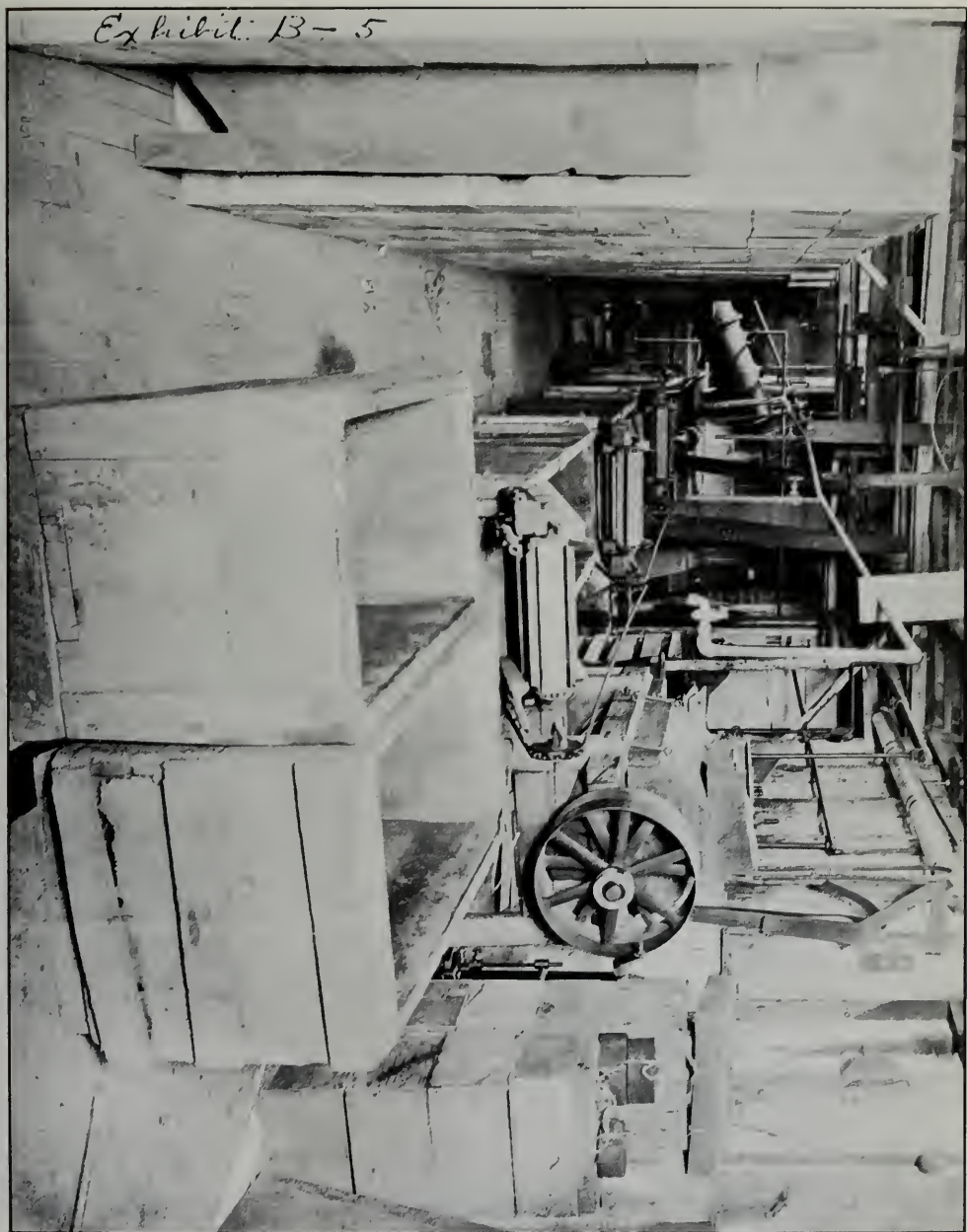


Exhibit B-6.

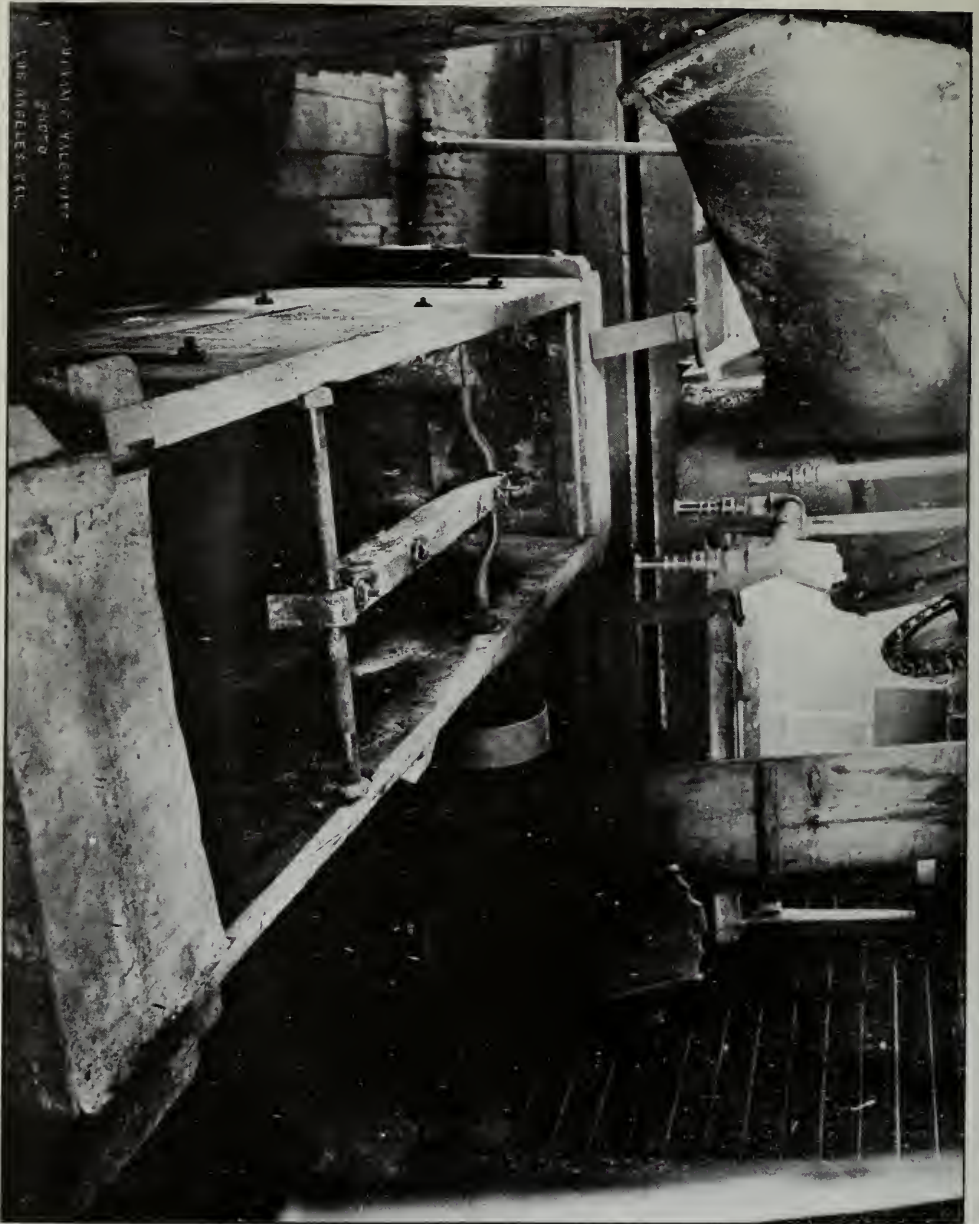
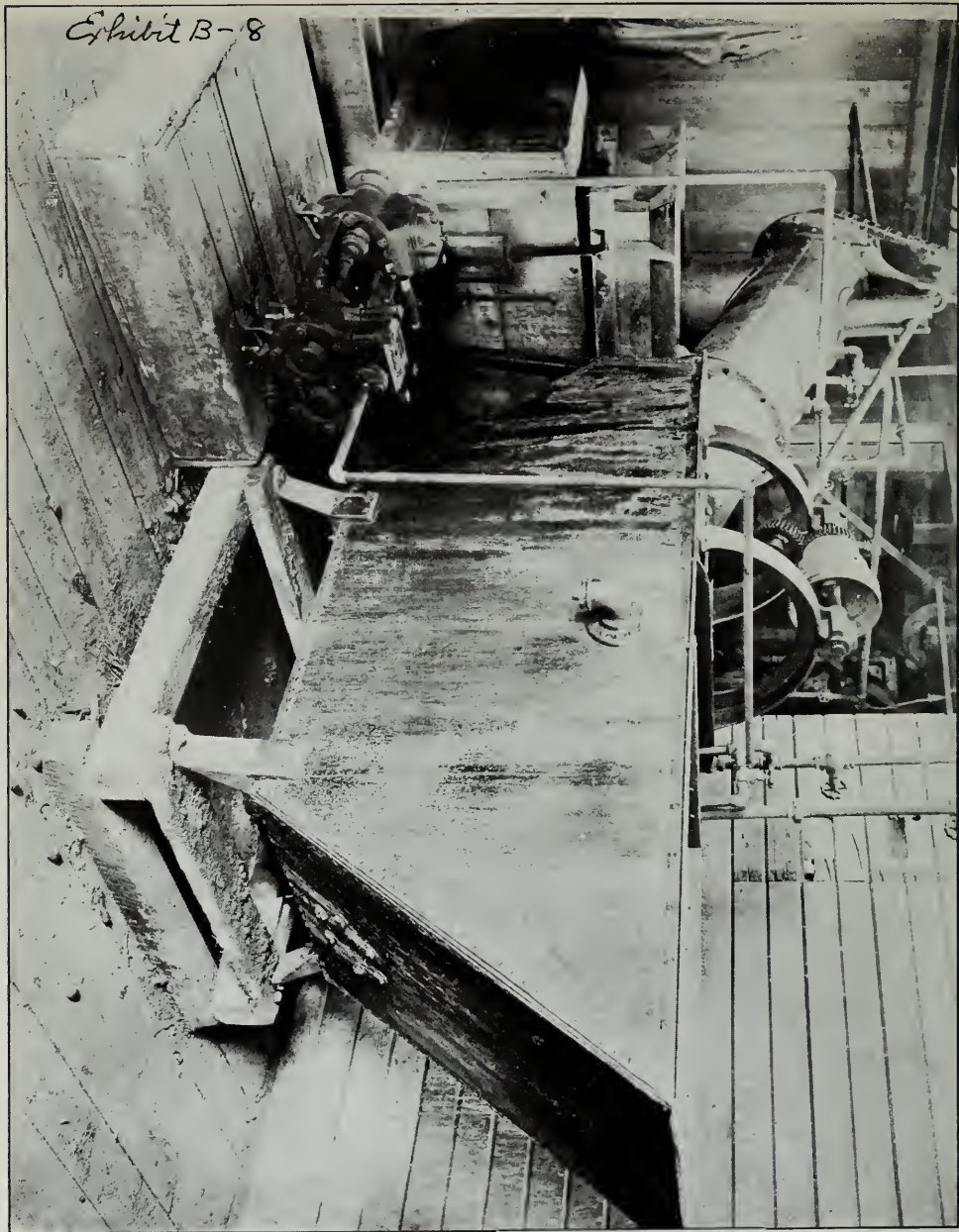


Exhibit B-7.

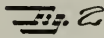


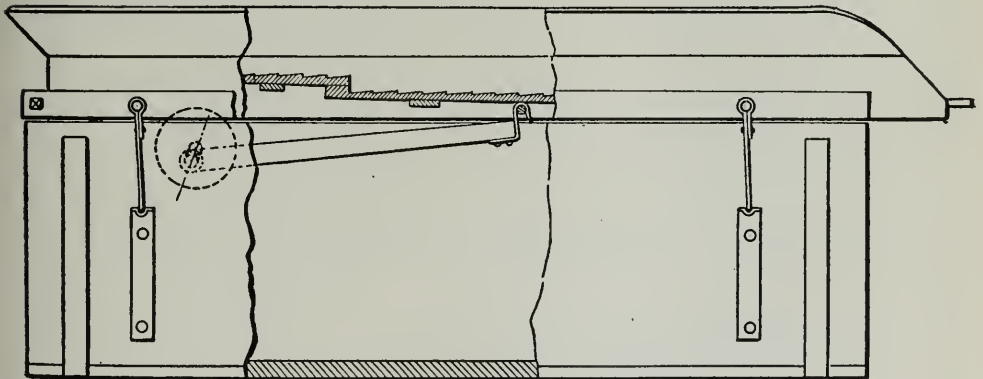
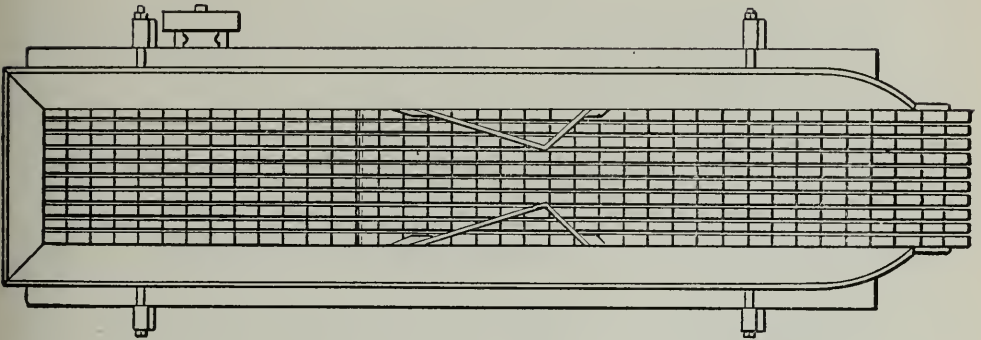
Exhibit B-8



[Endorsed]: No. 201. U. S. District Court. No. 2915. U. S. Circuit Court of Appeals, for the Ninth Circuit. Exhibits B-1—B-8. Filed Jan. 5, 1917. F. D. Monekton, Clerk.

Exhibit "B"—Drawing—No. 201. U. S. Dist. Court.

 *Fig. 2*



 *Fig. 1*

[Endorsed]: No. 2915. U. S. Circuit Court of Appeals for the Ninth Circuit. Exhibit "B." Filed Jan. 5, 1917. F. D. Monekton, Clerk.

At a stated term, to wit, the March term, A. D. 1916, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the city and county of San Francisco on Tuesday, the 28th day of March, in the year of our Lord, one thousand nine hundred and sixteen. PRESENT: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 201.—DUNKLEY COMPANY vs. CENTRAL CALIFORNIA CANNERIES CO.

No. 202.—DUNKLEY COMPANY vs. GRIFFIN & SKELLEY COMPANY.

No. 205.—DUNKLEY COMPANY vs. T. C. AINSLEY PACKING CO.

No. 206.—DUNKLEY COMPANY vs. ANDERSON-BARNGROVER MNFG. CO.

No. 209.—DUNKLEY COMPANY vs. GOLDEN GATE PACKING CO.

No. 210.—DUNKLEY COMPANY vs. J. F. PYLE & SON, INC.

No. 211.—DUNKLEY COMPANY vs. HUNT BROTHERS CO.

No. 212.—DUNKLEY COMPANY vs. SUNLIT FRUIT CO.

**Order that Suits be Heard and Tried Upon the Same
Testimony and Proofs, etc.**

In accordance with a stipulation filed it is ordered that these suits be heard and tried upon the same testimony and proofs.

* * * * *

*In the District Court of the United States for the
Northern District of California, Second Di-
vision.*

Before Hon. W. C. VAN FLEET, Judge.
DUNKLEY COMPANY,

Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES COM-
PANY,

Defendant.

Friday, March 24, 1916.

Counsel Appearing:

For the Plaintiff: F. L. CHAPPEL, Esq., and
JOHN H. MILLER, Esq.

For the Defendant: W. K. WHITE, Esq., and
FREDERICK LYON, Esq.

The COURT.—Is this case ready?

Mr. LYON.—It is ready. There are eight of these cases, your Honor, and under Rule 85, we believe that they should be consolidated as the issues are practically identical, being only a difference in the parties. Before taking these cases up, in view of the lateness of the hour I would like to ask the indulgence of the Court as to whether it will dispose of the matter of the answering of the witnesses on these depositions in the Pasadena case. The reason I ask that is that if the Court rules on these questions propounded to the witnesses, these depositions can be completed during Saturday and Monday, and insure the defendant having that testimony at Los Angeles when the Pasadena case is called; otherwise we are

going to be tied up here in the trial of [25] these cases for such a time as may possibly prohibit the completion of other depositions.

Mr. MILLER.—We are willing to stipulate that the testimony of these witnesses that may be taken here in this case, that is, of the same ones, in this suit, may be used in the Pasadena case with the same force and effect as if taken in the case down there.

The COURT.—What more do you want?

Mr. LYON.—We may not go into that defense in this particular case before your Honor at all, and it may not be necessary, and we do not wish to be forced to rely on the fact of these witnesses testifying in this case. We have a right to the testimony in the Pasadena case and we wish to preserve their testimony irrespective of this case.

Mr. MILLER.—They are subpoenaed in this case, and also in the Pasadena case, for the purpose of the same documents.

The COURT.—But it is question whether or not they are entitled to the information they seek in those depositions, and if they are, why of course that is one thing; if they are not, then they will have to wait until they get it in this case or when the case comes to trial. What is the question now? You had not completed the submission of the question when the Court had to defer the further hearing of the matter.

Mr. LYON.—I believe Mr. Chappell was stating at that time his objections to these particular questions. I will state that one thing we were after there was to lay the foundation for the introduction of sec-

ondary evidence, that is, our letter-press copies of certain letters; another was the discovery of the connection between the California Fruit Canners' Association and the Dunkley Company in regard to the attempt that is made, as we claim, to suppress evidence of this prior use. Now the witnesses have refused to answer the questions as to whether the records of the California [26] Fruit Canneries' Association prior to 1906 were destroyed in the fire at San Francisco at that time.

The COURT.—What was the purpose of that examination?

Mr. LYON.—The purpose of that is solely to lay the foundation for the introduction of secondary evidence as to the contents of the letters that were written at that time. We have carbon copies and letter-press copies, and we wish to prove by these officers of that company the destruction of those records at that time.

The COURT.—How do these things appear in the record before me?

Mr. LYON.—The record shows a transcript of our copies. The question is asked if the company did not receive such and such a letter and if it has the original of such letter, and whether or not those records were not burned during that fire; in fact, we of our own knowledge know that the San Francisco office of the California Fruit Canners' Association was burned during that fire, but we have to lay that actual foundation for the proof.

The COURT.—I can say to you right now that it is a very unsatisfactory method—that is one which

involves a question of any particular difficulty—for a Court to pass upon the question whether evidence sought to be elicited is going to be material in a case in another District, for the purpose of requiring a witness to answer under a subpoena, in pursuance of a proceeding to take his deposition, and I shall be very chary about making any ruling of that kind in any question that gives rise to any doubt in my mind, and I cannot see myself, while you are not bound by that, why, if you have satisfactory assurances that these witnesses will appear in that cause, why that will not meet all the necessities that you are seeking, unless the examination is an excursion for the purpose of enabling you to better prepare for trial?

Mr. LYON.—It is not that at all. Now, I may call your Honor's attention to this particular situation which I was in last week or [27] the week before last in Los Angeles in that same connection. I did not take the deposition *de bene esse* of a witness who was apparently in good health—

The COURT.—What witness are you speaking of?

Mr. LYON.—In another case, and he died the day before the trial.

The COURT.—That is liable to happen at any time.

Mr. LYON.—That is a reason for perpetuating testimony under these statutes.

The COURT.—You have a perfect right to stand upon your strict statutory rights, and I will pass upon them, if you will submit them.

Mr. LYON.—Hardly one of the questions to which

counsel has instructed the witness to refuse to answer is objected to on any other ground than that it is seeking information which ought to be sought by subpoena *duces tecum*. There is hardly a question in the whole record to which he addresses any other kind of an objection; that is particularly true in regard to a question of fact. There is no objection made before the Commissioner, for instance, to our question as to whether they have the record or whether their San Francisco office burned or whether the files burned, on the ground that those questions are irrelevant or immaterial or incompetent; the sole objection is that we are seeking by our examination what we should have sought by a subpoena *duces tecum*; that is the line of objection that counsel has made; and he has sought to control the witnesses entirely and instruct them not to answer, and allowed them of course to answer that they are not stockholders in the litigation, and of course in that connection your Honor must bear in mind that the California Fruit Canners' Association is not a party plaintiff nor a party defendant in any of this litigation; and it is only interested in this litigation insofar as our allegation of fact, that there is a free license granted to the California [28] Fruit Canners' Association under this patent in consideration of their taking no part in the defense and keeping its records and the mouths, if we may use the expression, of all its employees shut so far as possible in regard to the whole facts.

The COURT.—The California Fruit Canners' Association?

Mr. LYON.—Yes.

The COURT.—They are not parties to the litigation?

Mr. LYON.—They are not parties to the litigation in any manner. In that connection, there is a line of questions here where we seek to prove that a certain letter we have received was written in pursuance of this contract and under the direction of the managing officers of the California Fruit Cannery Association refusing our side access to any of its records for the purpose of securing proof of this prior use, and we are attempting by these witnesses to prove that line of facts, not particularly that they are engaged actively one way or the other, but that they are in pursuance of that contract blocking us from getting evidence all the way around; and these questions of fact are whether certain letters were not written and whether certain refusals to permit us to make inspections were not made; they are questions of fact all the way through. Another factor or question is this: as to whether or not the witness Bently did not make a certain affidavit in 1913; the question is not addressed to proving that he made that affidavit for the purpose of proving the facts therein stated but for the purpose of showing that he made that affidavit and then following it up by the subsequent question, of showing that the plaintiff in this litigation knew of that affidavit and upon that basis made this contract and gave this free license to the California Fruit Cannery Association suppressing this evidence.

The COURT.—Now, Mr. Lyon, you see that in-

volves a very complicated [29] sort of a question that primarily unquestionably should be decided by one who has full possession of all the issues in the case, that this Court cannot possibly have upon a motion to require a witness to answer in a deposition; that is very involved.

Mr. LYON.—Your Honor, in that view of the proposition we are remediless under the statute, are we?

The COURT.—No, I am not saying so; I am saying it presents difficulties; I would not decide it off-hand; you would have to present me some authorities and you would have to put me in possession of the issues presented under the pleadings by submitting those pleadings to me; I would not undertake to pass upon it off-hand.

Mr. LYON.—In what manner does your Honor wish the pleadings and those authorities submitted.

The COURT.—You can argue it now and submit it, if you wish; you must take your own course about that, but as I say, I would not undertake to decide it without being fully enlightened so that I would be able to say without hesitation that the evidence was within the issues.

Mr. LYON.—In view of your Honor's suggestion in this Pasadena matter I suggest then that the matter be submitted to you on briefs three and three, on each side, and that we have until Monday to submit the authorities we want and they have until the following Wednesday. I think that will clear it up.

The COURT.—Yes, I would want to feel my pathway clearly defined in passing upon a question of that kind.

Mr. LYON.—I wish to say in connection with that, that my principal reason for having it submitted on briefs is to avoid any statement that this is a fishing excursion or an attempt to get that evidence for any use in this case.

Mr. CHAPPELL.—The recognizance for the witnesses to appear [30] at Pasadena, if there is anything of that kind that will satisfy the requirements of the gentlemen, we are willing to furnish that, because we wish the case tried in open court.

The COURT.—Of course, the assurance of counsel on either side of this case would be sufficient recognizance for me, so far as that is concerned. I do not think either counsel would represent that certain things would be so unless they were intending to carry it out.

Mr. MILLER.—These witnesses are willing to waive their privilege whatever they have, and to accept service of a subpoena now to appear in the Pasadena case when the case is called for trial, and to waive mileage and witnesses' fees; they have agreed with me that they will pursue that course if necessary.

The COURT.—Now, I would like to ask counsel on the other side why does not that satisfy every need you have?

Mr. WHITE.—If opposing counsel will in addition to that agree that if the witnesses do not appear, they will not object to the introduction of these letters on the ground they are secondary evidence, that will be satisfactory to us.

Mr. MILLER.—That is what we are proposing to

have them do here, appear and testify.

The COURT.—But counsel is making this suggestion, and it is not an improper one, in view of the uncertainties of human life, that you include in that stipulation the provision that in the event either of these witnesses do not appear there that the secondary evidence which they are now seeking to lay the foundation for shall not be objected to upon the ground it is secondary evidence.

Mr. MILLER.—Certainly, we shall not object to it; as far as the materiality of the evidence is concerned, though—

The COURT.—That is a different thing; they are not asking you to stipulate as to the materiality.
[31]

Mr. WHITE.—In view of that agreement I see no reason for submitting this other matter to the Court, that is, in regard to answering these questions.

The COURT.—I think it would be better to drop it.

Mr. WHITE.—It is perfectly agreeable to us under the circumstances.

The COURT.—How about the consolidation of these cases?

Mr. MILLER.—I believe there are eight or these cases all told, and the one that we have been proceeding with is No. 201, Dunkley Company vs. Central California Canneries Company, and I would suggest that without any formal order of consolidation that it be agreed and stipulated that this first case, the one appearing first, be tried and that the others abide by the decision of that case, whatever it may be, whatever judgment is rendered.

The COURT.—There may be some differences in the evidence, some formal difference at least; it is a very usual thing, where the subject of inquiry is the same—the statutes not only contemplates it, but provides for it—it is a very usual method of trying cases of this kind—

Mr. MILLER.—That is Rule 85 of this court.

The COURT.—It is a statute as well; the Federal Statute is very much broader than the State Statute, and our rules embody both the Federal and the State statutory provisions; that is, I mean they are drawn upon lines which include those; the State Statute is narrower.

Mr. MILLER.—I suggest we ought to draw up some kind of an order, then, regulating this consolidation.

The COURT.—Of course, counsel understand that in any consolidation that involves issues as between different parties on one side or the other, and especially in a case of this kind, there would have to be separate decrees in each case, but the stipulation [32] should simply provide that the causes may be tried and heard together and all the evidence in any one of them applicable to any other may be considered by the Court in passing upon the issues in that case, so that when the Court comes to take up these cases for consideration, it will have a single record, but it will embody all that applies to each individual case.

Mr. MILLER.—I will prepare the necessary papers, your Honor, regarding the consolidation.

The COURT.—The order really should be that the

causes be united for trial because a consolidation strictly speaking under the statute contemplates a proceeding which relates to several different causes of action between precisely the same parties, and the statute provides that the Court shall designate a title—

Mr. MILLER.—As to the consolidated case.

The COURT.—As to the consolidated case; but you cannot do that where there are different parties; in such a case the Supreme Court held that there must be separate verdicts, if they are jury cases, and there must be separate decrees if they are equity cases.

Mr. MILLER.—That was what caused my remark about trying one and allowing the others to abide by the decision in that; I had that in view.

The COURT.—The other is, I think, the better plan because then the record will embrace all the evidence with relation to each and all of them.

Mr. MILLER.—I can provide for that.

Mr. WHITE.—I might state that so far as we can see there is only this difference between any one of these cases and any other one of the cases, and that is this: That the various defendants have not all used exactly the same type of peach-peeling machine; one machine varies slightly from another; so far as we are concerned we cannot see any difference between any of these machines. [33]

The COURT.—But the Court might find a difference.

Mr. WHITE.—I made a suggestion to Mr. Chappell yesterday that we would stipulate, for instance, that all the defendants had used the shaker type of

machine disclosed in certain photographs we showed Mr. Chappell, the said type of machine having been passed on by your Honor last fall in the first Dunkley suit brought here.

The COURT.—Has there been one of these cases tried?

Mr. WHITE.—Yes. In that case your Honor held the patent valid and held this particular type of machine having this shaker for causing the fruit to dance up and down on it so as to expose all sides of the fruit to the jets of water was an infringement on the theory that that shaker was the equivalent of the revolving and rotating brushes in the plaintiff's patent, which turned the fruit over so as to present all sides of the fruit to the jets of water. Now, in this Central California Company's case the defendant used a revolving drum, and the peaches, after the skins have been disintegrated are injected into the upper end of this drum and as the drum revolves the peaches have a tendency to climb up on the side of the drum, and as they climb up they are bombarded by these jets of water; in other words, that revolving drum is another means of turning the peaches over so as to present all sides thereof to these jets of water, and so we say to Mr. Chappell that we would admit that all of the defendants had used this shaker type of machine shown in these photographs, and that the Central California Canneries Company had used this particular drum type of machine providing he would admit that so far as the question of infringement is concerned, those two machines are identical; we do not see any difference between them; but if he does, why of course then we

want to have a chance to cross-examine his witnesses as to such differences, but from our point of view they are identical. [34]

The COURT.—Do you want the Court to require him to enter into that stipulation?

Mr. WHITE.—No, I am simply suggesting that, thinking perhaps he might have changed his mind; if we enter into that stipulation all these cases are identical.

The COURT.—The difference only, then, consists in the different form of the instrumentality through which the peeling was had?

Mr. WHITE.—The difference exists only in the means of turning the fruit over and conducting it along under these water jets.

The COURT.—You call that an instrumentality, don't you?

Mr. WHITE.—Yes, that is from our point of view, and we cannot see any other difference.

The COURT.—I understand, but the trouble is the question that you are now addressing yourself to is one solely for counsel, and one the Court is not able to direct counsel to consent to.

Mr. WHITE.—I understand, but here in this particular case, we would be very willing to make that stipulation.

Mr. CHAPPELL.—There is an important difference in the two machines, and it looks to us as though we were waiving some of the advantages of specific features of the invention as well as broad features, if we should do as counsel suggests; we are highly agreeable to stipulating as to the structures and

think that the question of difference for the Court to consider is a very slight one, but still it is important in the operation of the machines.

The COURT.—Under the suggestion of counsel themselves, I am satisfied from what you say that there cannot in the nature of things be very much difference between you except in your construction as to the effect under the patent law of these forms of structure.

Mr. WHITE.—I may overcome that objection by saying we are willing to do this, to admit that every defendant other than the [35] Central California Canneries Company has used this shaker form of device and allowed Mr. Chappell to put in his proof regardless of the Central California Canneries machine; that is, there is no doubt about the use of that type of machine, but we want to have a chance to cross-examine the witnesses, if they point out distinctions that we do not appreciate now.

The COURT.—What I was going to suggest, Mr. White, was this: I am inclined to think that we can make haste by counsel taking this matter of the stipulation up between themselves this afternoon. We will take a recess until Tuesday morning, and I think that in all probability you will have a stipulation here which will eliminate a great deal from these cases; you can stipulate as to the character of the different machines used by the different defendants, and that the causes be all heard together as I suggested, and all the other features that will readily suggest themselves to the minds of counsel, and I

am inclined to think we can get through with them within a short time.

Mr. CHAPPELL.—It is our understanding that seven or eight defendants are using the drum machine, and we are not aware of their using the other, but if they are we wish to have that question tried out also.

The COURT.—We will proceed Tuesday morning when counsel have had a chance to eliminate as I think they will be able to a good many of the time-consuming considerations.

[Endorsed]: Filed Oct. 10, 1916. W. B. Maling Clerk. By J. A. Schaertzer, Deputy Clerk. [36]

*In the District Court of the United States for
the Northern District of California, Second
Division.*

Before HON. W. C. VAN FLEET, Judge.

IN EQUITY—No. 201.

DUNKLEY COMPANY,

Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES,

Defendant.

Proceedings Had Tuesday, March 28, 1916.

Tuesday, March 28, 1916.

Counsel Appearing:

For the Plaintiff: FREDERICK L. CHAPPELL,
Esq., JOHN H. MILLER, Esq.

For the Defendant: FREDERICK S. LYON, Esq.,
WILLIAM H. WHITE, Esq., KEMPER B.
CAMPBELL, Esq.

Mr. WHITE.—If your Honor please, I will ask that there be entered in each of these cases the appearance of Mr. Kemper B. Campbell as a solicitor on behalf of the defendant.

Mr. MILLER.—If your Honor please, I suppose the usual stipulation will be considered as made in regard to the reporter, that he shall take it down and each side pay half of the daily expense and the prevailing party charge up his half of the cost bill.

The COURT.—Very well.

Mr. CHAPPELL.—Your Honor, a stipulation has been entered into in the eight cases, that they may be tried as one case; I have the stipulation here, which also covers the defendant's [37] structure; also admits the incorporations of the plaintiff and embodies illustrations of the structures that the defendants are manufacturing. I desire to offer in evidence a printed copy of the patent in suit.

(The document is marked "Plaintiff's Exhibit 1.")

If your Honor please, the suits are on the same patent that was before your Honor last fall, last December, involving the peeling of peaches by a ma-

chine, the principal function of which is the proper delivering of a strong spray of water directly against the peach after the same has been treated to an alkaline solution which softens the peel of the peach. We went to considerable trouble to have some peaches for use, but they were all spoiled, so that we are unable to demonstrate anything about the matter.

The claims now insisted upon are claims 1, 2, 3, 4, 5, 14, 19, 20, 21, 23, 24, 25 and 26.

For convenience I have had the drawings of the patent somewhat enlarged, and figure 1 and figure 1a placed end to end on the same sheet, and figure 2 and figure 2a placed end to end on the same sheet, because that shows the complete organization of the machine.

The COURT.—What diagram is that?

Mr. CHAPPELL.—These are the patent drawings photographically enlarged, if your Honor please; they are the same as figure 1 and figure 1a, and that makes a complete plan of the machine, and I have put these parts end to end for convenience in the considering of them, and figure 2 and figure 2a the same way.

In operation the peaches are deposited on this hopper here.

The COURT.—You offer that in evidence?

Mr. CHAPPELL.—It is simply the patent drawings made [38] larger for convenience and rearranged. We offer it in evidence if it will be any convenience.

The COURT.—Only an illustration of your patent?

Mr. CHAPPELL.—That is all.

(The documents are marked “Plaintiff’s Exhibits 2 and 3.”)

The whole fruit, whole peaches, are deposited in this hopper here; are picked up by this conveyor, delivered into this tank of heated caustic solution; by this conveyor carrying them down, the upper run running underneath the screen that constitutes the top here; the peaches are then dropped out on to these inclined hoppers. The machine is shown as a three-way machine; they drop between the brushes at this point and are delivered out here into a tank of water for cooling purposes, the tank not being shown as it is not a part of the invention; this second sheet shows the figures somewhat enlarged; it shows the brush structure receiving the peaches at this end, passing them along on this endless conveyor, shooting them out at this point, to carry them along into the cold water; the relation of the brushes appearing in this figure 4, where the path of the peaches is, is indicated by dotted lines; three pipes are disposed so that they deliver the sprays concentrically against the peach, and as the peel of the peach has been previously softened by the caustic solution, these jets pare and remove the peel wherever they strike; the pipes are of considerable length; the perforations are indicated at this point, and at this point through which the spray is delivered—

The COURT.—When you say “this point” just indicate what figure you are referring to?

Mr. CHAPPELL.—Referring to figure 4, and the position of the pipes is indicated in figures 5 and 6; that is, the cross [39] section; the brushes, in

place of striking down against the peach, turn up and away from the peach, so that as they pass along they are turned, thrown first in one direction and then back, and as the pipes are seen in figure 5, deliver from three directions against the peach; it will be seen it is very thoroughly struck by the sprays as the peach passes along; the pipes extend beyond the ends of the rotary brushes as seen in figure 4, and beneath the work of the brushes by striking the peach after the same has passed entirely beyond the action of the brushes which completely rinses the same; the brushes are, of course, completely soaked by water and they are specified as a fibre brush and are very soft as a consequence; but in the patent there is also described a sponge rubber brush for the final work or the final end of the work of the brush, the same being made of soft spongy rubber like a bath-brush. The patent indicates that the brush acts somewhat on the peach in abraiding the surface, but the principal work is done by the sprays, and the sprays are particularly claimed as instrumentalities in the claims involved here, and they are the principal instrumentalities as we can show, because the machine will not peel a peach if forsooth the sprays of water are cut off; if the machine is then run, although the peach has been soaked, it will not be peeled; the peach passes too rapidly for one thing for the brushes to act upon it, but if it was run slowly the brush would simply move the peel to another place on the surface, and it would not be gotten rid of; it needs the active agency of a spray of water striking against the peach to dash the disintegrated

peel from the surface of it. It is also particularly necessary that the spray act upon the peach because of the irregularities in the surface of the peach, the brush would not reach the cavity around the stem, or the inequalities [40] on the crease of the peach, all of which are reached positively by the spray. The peach, as it passes from figure 1, turns over and over; it advances somewhat like a wheel; the rapid motion of the brush naturally tending to give it a reverse motion rather than the forward rolling motion, and the brushes acting at different rates and turning up against the side of the peach, tend to give what may be called a cork-screw motion at the same time, so that these jets strike every part of the peach, and for that reason the particular language of some of the claims calling for the turning of the peach, so that it is acted upon by the spray, is of particular consequence.

The COURT.—These brushes are arranged in such proximity as to reach the peach on both sides at the same time?

Mr. CHAPPELL.—In practice not, but if they do reach and touch the peach the action would be the same because they are so quickly soaked that they cease to act more than as a turning means for the fibre, and there being some slight amount of lye that reaches there, they are completely softened in a very short time, although the brushes on such specimens as we show here if dry, would seem to be a very harsh means to apply to a peach, but to understand the operation of the machine we must remember the spray is present and the brush completely soaked so

that it is soft, and for that reason it was found not necessary to supply the soft spongy rubber because when the fibres were soaked it was almost equally as soft as the rubber.

The defendant structures do not present the specific embodiment made use of by the plaintiff; there are two of these structures, one of which appears in the photographs attached to the stipulation—the photographs marked B, Nos. 1 to 8, inclusive, of the stipulation—of which I hand your Honor a [41] copy for convenience, showing a structure in which there is a scalding-tank very similar to a tank previously used for the scalding of tomatoes, which is No. 8 of the bunch of drawings which your Honor has, which delivers the peaches down on to a shaker which is exhibited in the drawing exhibit “B-1,” where sprays of water delivered from nozzles are shown delivering upon it; b-2 shows the same thing without the sprays; b-3 shows substantially the same thing, with some side-guides to bring the peaches to the center; b-4 is a long general view showing the sprays; b-5 shows the same thing without the sprays in operation; b-6 shows the Pittman and crank-shaft connection for shaking the shaker back and forth; and b-7 shows the same in another position, showing the action of the crank-shaft and the tracing of the sketch which is attached to the stipulation shows the stepped arrangement of the shaker so that the peaches when they move on this shaker come to this point and are turned over so that the point that had been at the under side is then exposed to the action of the sprays; that structure has been made use of

according to the stipulation by some of the defendants. I hand a copy of exhibit "A" fastened to the stipulation for the convenient use of the Court in marking; it shows another form or embodiment of the invention that is made by some of the defendants. In that structure the preliminary tank for the lye bath is of a different form; the form of that tank being immaterial so far as the claims are concerned. And after the peaches have been peeled they are dropped into a drum which is marked on the drawing with the numeral 5; the elevator for passing the peaches to the tank is marked with the numeral No. 1; the steam-hood at the front of the scalding is marked 2, and the scalding is marked 3, and the [42] pre-heating lye-tank is marked 4; within the drum is disposed a pipe to which is attached a particular type of spray-nozzle, which delivers the spray of cold water on to the peaches within the drum as the drum revolves; the drum is revolved by means of the chain illustrated or by any other suitable means; the drum is of sheet-metal and corrugated so that as it turns over it carries the peaches up toward one side with a brushing action, and the peaches drop down towards the bottom and because of the inclination of the drum are advanced through it; the spray-pipe is marked 6; the peaches deliver from this peeling-drum into a steam blanching chamber, or as it is called blanching-box conveyor 7; the same is there carried on an endless apron past the water sprays 8, thence to an elevator.

The COURT.—Where is 8?

Mr. CHAPPELL.—8 is the double spray at the

end, at the right hand of the drawing; one being from one side and then the machine delivers cross-wise and runs in a direction at right angles, so that unless that is taken into consideration the structure might be misleading; it turns a square corner down there at the end of the drum.

The COURT.—7?

Mr. CHAPPELL.—Yes. Between that part 7 and the part 6; it is at right angles; it then delivers off on the carrier and then up the elevator 9 into the peach grader which is marked 10, the grader being no part of *this* invention, but being a thing that receives the peaches after they have been treated. In both of these defendant machines, the peaches are cut in half and the pit removed before they are treated, and the machines are especially designed to take care of the halved fruit, whereas the Dunkley machine was designed to be made use of in conjunction [43] with a Dunkley automatic pitting machine handled the peaches whole, but by a proper manipulation either machine will handle whole or halved peaches; the Dunkley machine not being designed for halved peaches, the other machine not being designed especially for whole peaches.

The COURT.—How many of the defendants use this character of apparatus?

Mr. CHAPPELL.—Our information is that seven of them use that device; one of them uses the shaker alone; some of them use both the shaker and the drum; that is, our information is such. The drum type with revolving parts seems to us to be more completely representative of certain claims than

does the Shaker structure; it might be noted that this patent was pending in the Patent Office for a period of nearly ten years; that was occasioned by an interference proceeding as your Honor no doubt remembers as you referred to the decision of the Court of Appeals in your former opinion on the subject. I think I have the matter completely opened as I apprehend it will not be necessary to apply the claims in detail in my opening statement; if the other side decides to make their opening statement now, I think it might be in order; unless your Honor has some question to ask, to make my opening entirely clear—

Mr. WHITE.—We have no opening statement now.

Mr. CHAPPELL.—Then I will make no statement as to our position regarding any of the defenses. I will ask that Mr. Melville E. Dunkley be sworn. [44]

Testimony of Melville E. Dunkley, for Plaintiff.

MELVILLE E. DUNKLEY, called for the plaintiff, sworn.

Mr. CHAPPELL.—Q. Will you state your age, residence and occupation?

A. Age, 35; residence, Kalamazoo, Michigan; occupation, manufacturer.

Q. What is your relation to the Dunkley Company, the plaintiff?

A. Management of the operative part, and I am a director in the company.

Q. I call your attention to the patent in suit, "Plaintiff's Exhibit 1," and ask you if you are fa-

(Testimony of Melville E. Dunkley.)

miliar with the structure there illustrated and described? A. Yes.

Q. Are you familiar with the machines made in accordance with that description and with their operation? A. Yes, quite familiar.

Q. Have you ever operated such machines?

A. Yes, a good many of them.

Q. Please consider the patent and your experience in the operation of the machine, and describe briefly how the machines have acted upon the peaches, that were made in accordance with that patent?

A. In the operation of the machine, the peaches are fed by the operator on to the hopper marked E-1; this is sometimes agitated so as to help the feeding of the peaches, and they are delivered from that hopper to the continuous table or continuous belt—I don't know the number of that, I think it is—

The COURT.—D, isn't it?

A. D, I think; this is made up of two chains, and a series of metal flights made to carry a single roll of peaches laid cross-wise or opposite to the travel of the table; this carries the peaches through the chamber or tank marked B, submersing them in the caustic solution.

The COURT.—Where is B; I do not find it? [45]

A. It is on this figure 2 and figure 2-a; it shows the side view of the scalding; the peaches are carried through that and ejected on to the hopper marked F, and that is in figure 1-a.

Q. 1-a?

A. That is in figure 1-a, the hopper marked F,

(Testimony of Melville E. Dunkley.)

which is a hopper with three compartments, and by this hopper the peaches are led in single rows and introduced into the peeling machine; at the bottom of this hopper marked F, the spaces marked on here T—I think they are all marked T—

Q. —One is marked T, T-1—

A. —The T is right opposite the 3.

Q. It is not here?

A. The T refers to the water-pipes; I do not find the conveyor-belt.

Q. This here?

A. That refers to those water-pipes you can see here; this is the water-pipe here—T and T-1; now the belt is H. Maybe I can show it; on there.

Q. I do not think I can read it at the same time that you can; I ought to be able to follow it on this if they are mere photographic enlargements?

A. These belts are endless belts which pass over the pulleys marked H-1 and H-2, and on the belts are placed rather closely together small brushes; the peaches go down through the hopper and are picked up by these brush belts and carried through the machine; the brush belts have operated at speeds practically from 1000 feet to 1500 feet per minute; that is, surface speeds, carrying the peaches very rapidly through the machine and ejecting them either into the tank of cold water or into conveying means to carry them to the pitting-machine or into the individual pitters and as the peach passes through this peeling machine, and I refer now to figure 5, it is carried on this brush-conveyor H, and between the

(Testimony of Melville E. Dunkley.)

water-pipes G; the cylindrical brushes, I think they are K. [46]

Q. They seem to be K?

A. The cylindrical brushes K, which revolve upward and away from the center, strike the peach first on one side and then as that started to the other, the other brush will engage the peach and give it practically every motion that you can turn a peach.

Q. One brush turns this way and the other this way?

A. Yes, and the peaches going through in between them, and the conveyor-belt that carries the peach is going very rapidly, so that the peach will go through there as it goes down from the hopper, it starts with a bounce as a rule, it goes through there and goes in a zigzag course on through the machine; the speed is very rapid, and the peach is really spun in all directions. The pipes G—

Q. —In practice there is room between these cylindrical brushes for the peach to go back and forth from one to the other?

A. Yes. The drawing that this machine was taken from was set for pie-peaches; this machine was specially built for pie-peaches, and these peaches all run under $1\frac{3}{4}$ inches in diameter; that was the grade of the machine peaches that were put into the pipes, so they had ample room there to be perfectly free with a considerable movement; the pipes G are perforated about every $\frac{1}{2}$ inch—

Q. —There are three of those pipes?

A. Yes; approximately I should say about one-

(Testimony of Melville E. Dunkley.)

sixteenth perforations, using somewhat under a one-sixteenth inch drill; these perforations extend for the complete length of the pipe and these perforations were directly toward the center of the space bounded by the brushes K and the conveyor H, so that as the peach was carried through and as it was spun in different [47] directions, this series of jets marked paths around the surface of the peach as it went through, completely taking the peel off as the surface was turned. I don't know that any more description should be given to that.

Mr. CHAPPEL.—Q. Indicate the rapidity of operation and the capacity of the machines that you have seen operated?

A. The capacity of course depends somewhat upon the size of the peach; the machine has been in operation on a general run of Michigan peaches and has turned out 1800 bushels in 10 hours; these are peaches averaging from perhaps 200 to 400 to the bushel, a bushel is 50 pounds; the rapidity will be shown by the speed of the conveyor-belt; it is almost impossible to get two peaches on that conveyor-belt within a distance less than 4 inches of each other.

The COURT.—Q. How is that?

A. I say it is almost impossible to get two peaches going through the machine within a distance of each other of less than 4 inches.

Q. Why is that?

A. It is owing to the rapidity that that brush goes through there.

Q. They do not crowd one another then?

(Testimony of Melville E. Dunkley.)

A. No.

Q. Nor rub against one another?

A. No not at all.

Q. They are carried through in a single row?

A. In a single row.

Q. And separated by a considerable space?

A. Yes; as the brush picks these up they drop right into their cushion; it is really a cushion; the brushes are soaked up so that they are very soft and as they drop in there they are picked off like that (illustrating), so that it is almost impossible to crowd your machine.

Q. The brush runs with greater rapidity than the movement [48] which places them on the brush?

A. Yes, that is gravity; in the hopper here which is shown just as an illustration of the hopper, the pitch is nothing to what is shown here; the pitch here would be nearly at right angles.

Q. Where is that?

A. That is this; you can see it is considerably more than is shown here; this goes back under here, and the pitch there is so that the movement of the peaches as they are dropped out of these buckets, one row at a time, before they can get in there, they have all been picked off one by one and carried through there.

Mr. CHAPPELL.—Q. How many workmen are required in attendance when the machine operates to full capacity as you have indicated?

A. One operator is sufficient to attend to the feeding of the machine, and it sometimes takes one or

(Testimony of Melville E. Dunkley.)

sometimes two to take the product away from the machine; it is a matter of how they are fitted up to handle them; three operators are sufficient to handle a large number of peaches.

Q. They do not get the supply and bring it to the machine, or do they?

A. No, the supply is usually brought to the machine on trucks and the operator that is feeding the machine handles them from the truck into the hopper.

Q. I now direct your attention to Exhibit "A" attached to the stipulation, and ask you if you saw that machine?

A. This is a drawing which I made from a rough sketch and notes which I took at Lorenzo, sometime in December, at the plant of the Central California Canneries—I will have to look at my notes in order to get that.

Mr. WHITE.—That is the correct name.

A. Central California Canneries; this was made December 9th [49] and it is a more or less rough drawing of the outfit in the plant of the Central California Canneries at Lorenzo, California.

The COURT.—Q. Just explain to me what the process is through that, where the initial point is and where the final—

A. —The peaches are fed into the hopper marked 1, are fed on to the elevator marked 1, and in through the hopper marked 2; I was not allowed to see the inside of that, and Mr. White who accompanied me, said that it was a structure along the lines

(Testimony of Melville E. Dunkley.)

of all of them used; it appeared to be the Plummer pipe, having bevelled vanes.

Q. This is the hopper?

A. This is the hopper with a steamhood over there to carry away the surplus fumes; the peaches are evidently carried through by vanes—

Q. —What do you mean by vanes?

A. That is supposed to show the hinges on top; this top would raise up, a sort of archimedial screw.

Q. This is inclosed?

A. Yes. The bottom is shown pitched here to take care of the drainage and cleaning; this is supposed to be a thermostat which regulates the steam supply to keep the contents at a uniform temperature, and this box, marked 4, is an auxiliary heating box in which water and caustic soda was placed so that it could be introduced into this tank without cooling the contents down; as I say, the method of carrying the peaches through this scalding, I was unable to see, but surmised that it was carried on a shaft with a number of vanes which with the archimedial screw motion carried the peaches forward and ejected them here into the drum marked 5. This consisted of a cylinder—if I may read this, the notes that I took at the time—mounted on four trunnion rollers, which rollers are carried by a steel frame and are placed inside [50] of a metal drain-pan, with high metal sides to act as splash guards. The guards are not shown on here; the guards were fastened to this pan under here and came up nearly to the top of the drum. The cylinder was made of a

(Testimony of Melville E. Dunkley.)

sheet-steel, was approximately 11 feet 10 inches long, and about 23 inches in diameter, the metal being corrugated or fluted; at the bottom of each flute were $\frac{1}{2}$ inch holes, $1\frac{3}{8}$ inches from center to center, extending the full length of the cylinder. These are shown here by the dots. The flutes or corrugations were rounded at the inside apex and sharp cornered at the outside. That is hard to show here, but the inside of this that comes in contact with the fruit was more or less rounded, while the outside was bent sharp at about, I think it is, a little less than right angles. The holes referred to were punched so that the sharp bend, or valley of the flute, bisected each hole. This cylinder was revolvable, as at near both ends was a circular track which rested upon the pulleys attached to the frame work, and at the feed end attached to this track was a rim-sprocket for driving. This is shown here. The driving means were inside this drum; they were not shown here, but it lays in a cradle composed of four rim pulleys, and revolves on these tracks here. Extending throughout the length of the cylinder and approximately equidistant from all of its sides was a 2-inch pipe fitted with a series of Oakland Sprays, placed approximately every 8 inches on this pipe. The outside of it was shown right at this point; that extended throughout. This you see, is about the center of this drum; the drum would extend to about down here, and this pipe extended practically the entire length of the drum, and every 8 inches—you see the pipe in this view here—that goes right back through

(Testimony of Melville E. Dunkley.)

the drum, and about every 8 inches [51] was an Oakland Spray so arranged that it threw the spray downwardly and a little to one side; evidently as the cylinder revolved that carried the peaches more or less away from the center and kept them a little to one side.

Q. What is an Oakland Spray?

A. An Oakland Spray is a spray with a nozzle about $\frac{1}{4}$ inch, and has a deflecting blade.

Q. It was shown here on the former case?

A. Yes; it makes a fan-shaped jet.

Q. Something like the character of the appliance used on these more modern street water-wagons?

A. Yes; it throws a flat spray, fan-shaped. The discharge end of the cylinder is 27 inches above the floor, and the feed end is about 8 inches higher, giving approximately 8 inches pitch for practically 12 feet—11 feet 10 inches; the pitch of this is so arranged that as the cylinder revolves the peaches travel through there on a zigzag path; they are carried up, and then as they get far enough they tumble off of the projection or flute on the inside which carries them, and they slide down and at the same time slide forward owing to the pitch of the cylinder. The fruit is discharged from this cylinder upon a moving conveyor-table composed of two chains—

Q. This is the conveyor-table?

A. Yes. That is composed of two chains with copper or brass—I think they were copper—flights, which made a practically solid table and allowed it to turn as it went over the pulleys. This table was

(Testimony of Melville E. Dunkley.)

inclosed in a model housing or box, and arranged above the table, and inside of the housing was a series of perforated pipes with the perforations pointing downwardly toward the table, and so arranged that they could spray the fruit as it [52] passed along the table, with a jet of either steam or water. At the end of the discharge end of the table was a semi-bucket type metal elevator to receive the fruit and elevate it to an Anderson-Barngrover peeled peach grader. At the spot where the peaches tumble from the horizontal brass top conveyor—that is shown here—table, on to the elevator were arranged four pipes having an enlarged head sprinkler on each for spraying the peaches as they tumbled down and on to the elevator to give them a final cooling and washing; that is given on this drawing as No. 8.

Q. And the elevator is No. 9?

A. No. 9. The face of the sprinkler heads was filled with a multitude of fine holes, approximately one thirty-second of an inch in diameter; the face of this sprinkler I should say was about 4 inches.

Q. These heads are so directed as to spray not only as they come out of the drum but as they go up the elevator?

A. Yes, as I understand the use of these steam boxes, the practice in some places is to use steam and some places hot water; I have seen both used.

Q. You mean for peeling purposes?

A. No, for blanching and washing. Another matter, which I don't know as it has any bearing on this case, was the machine which stood unattached near

(Testimony of Melville E. Dunkley.)

this machine and which could be readily set in to this cylinder, was a Thomas Monitor Tomato-scalding and Peeling Machine; that is a standard machine.

Q. That would not be a part of this combination, would it?

A. It could be set in there and do the same work; I don't know whether it ever had been, or not; it was unattached and was not connected in any way at that time.

Mr. CHAPPELL.—Q. From your experience in the operation of [53] machines state whether or not you consider the peeling of the peach by this machine similar to the peeling of the peach by the structures exemplified in the Dunkley Patent, and pointed out in the claim in suit.

Mr. LYON.—That is objected to as leading and calling for the mere conclusion of the witness, and not for a statement of fact.

The COURT.—I do not think so. This witness is a man who has had sufficient knowledge of the operations of this machine, that is, of the plaintiff's device, the device of the patent, to be able I think to give his opinion as to the relative operation of a kindred device. The objection will be overruled.

A. The operation of the two machines, according to my opinion is very similar. In the machine of S. J. Dunkley the peaches are turned as they are acted upon by the sprays, by the two brushes K and K, and more or less by the—I think I have these

(Testimony of Melville E. Dunkley.)

numbers right—by the conveyor brush; in the machine having the cylinder practically the same action takes place, and the peaches follow nearly the same path as they go through the machine; in the Dunkley machine the peaches will go through in a zig-zag, something like that (illustrating); in the other machine the peaches will go through in a path more or less like that (illustrating); it may be somewhat exaggerated.

Q. Sharper angle?

A. They will be carried up and slide down; at the same time they will be acted upon more or less by the brushing action of the interior of the cylinder which in comparison with this is perhaps the same as an external gear and internal gear in its action and at the same time they will be so turned that the jets of water will be able to cover the surface of all the individual specimens. [54]

Mr. CHAPPELL.—Q. Have you prepared a drum or cylinder that correctly illustrates the drum on this exhibit “A”?

A. I believe so; there may be some of the minor details, owing to the reducing of the size, that makes some difference, but I believe that it illustrates it.

The COURT.—Are you referring to the defendant’s device? A. Yes.

Mr. CHAPPELL.—Q. Is this the drum here in court? A. Yes.

Mr. CHAPPELL.—This structure is rather bulky, your Honor; we simply ask to have it marked for

(Testimony of Melville E. Dunkley.)

identification so as not to encumber the clerk with taking care of it, as "Plaintiff's Exhibit 4."

(The structure is marked "Plaintiff's Exhibit 4.")

A. That shows a fairly good idea of the cylinder by which the peeling is done.

The COURT.—The pipe through its center is the perforated pipe that you speak of?

A. Yes, having the Oakland nozzles, and I believe there is one in there now; I will take it out.

Q. Having them arranged about so often?

A. Yes, every 8 inches in the machine, which I saw at Lorenzo.

Mr. CHAPPELL.—The Oakland nozzle referred to by the witness is offered in evidence with the request that it be marked "Plaintiff's Exhibit 5."

(The Oakland nozzle is marked "Plaintiff's Exhibit 5.")

Q. Have you a structure here that exemplifies the plaintiff's patent?

A. To a more or less extent, yes; this was taken from a very old machine and hurriedly put into a temporary frame-work to show the relation of the machine as shown in the Dunkley patent; some of the dimensions however on here are not exactly as they should be; I do not believe however that it [55] makes any special difference; this is set a little bit higher than it would be normally; otherwise it is about the same.

The COURT.—About the same as the apparatus set up for actual practice?

(Testimony of Melville E. Dunkley.)

A. On small peaches; this is set a little bit high to allow the introduction of peaches through here of any size; on peaches under 2 inches I think that would work very nicely.

Mr. CHAPPELL.—This structure identified by the witness is bulky, and it is requested that it be marked for identification “Plaintiff’s Exhibit No. 6.”

(The structure is marked “Plaintiff’s Exhibit 6.”)

The COURT.—The other pipes are down in between the brushes?

A. These are just set in here, and they become turned, but the perforations come to about that angle from these pipes, between these two brushes—these extend straight down; now, as I said before, the patent drawings show the machine set for a peach under $1\frac{3}{4}$ inches in diameter; the peach will go through there—

Q. —I see that one of these rotary brushes has a spiral form and the other straight; is that so in actual practice?

A. Not at the present time; that was put in the first machines that were built with an idea that perhaps it would give another motion to the peach as it went through there; it, so far as we could see, had absolutely no effect.

Q. That is, the spiral formed one?

A. Yes; either one or the other is as good.

Mr. CHAPPELL.—Q. Now, I bring your attention to the photograph attached to the stipulation and marked exhibit “B,” numbered 1 to 8, and to

(Testimony of Melville E. Dunkley.)

the structure in that connection, and ask you if you understand those structures and the operation of the [56] same?

A. I have never seen this machine in operation or never have seen a machine.

The COURT.—Q. Which machine are you speaking of?

A. The machine represented by the photographs and by the sketch; I would not care to give an opinion upon the operation of that machine until I could see the machine perhaps in operation or see a view of the machine itself.

The COURT.—Whose device does this represent?

Mr. CHAPPELL.—It represents the defendant's device.

The COURT.—Which one of the defendants?

Mr. CHAPPELL.—The Golden Gate, as I understand.

Mr. WHITE.—It is agreeable to us to have the witness express his opinion based solely upon the photographs; I think the operation of the machine shown therein is perfectly obvious.

Mr. CHAPPELL.—Will you then please do so?

A. The sketch given in the stipulation shows a little better idea I believe than the photograph of the action of the machine, and if I am not mistaken I believe that is a similar design to one of the Beekhuis patents; if properly hooked up with sprays and proper operation, I see no reason why it should not peel peaches; to what extent would be hard to say, or as to capacity.

(Testimony of Melville E. Dunkley.)

The COURT.—Q. Describe to me how that is supposed to work.

A. From the photographs, the peaches are first treated in a so-called grasshopper scalding, which is shown in No. 8, and this is practically the same type of scalding or peach-treating machine that was shown in the other case; in this peaches are dumped in bulk into the tank part, into this part here (illustrating); it is not covered over in this machine; this usually contains a solution of caustic soda and either perforated or [57] radiating steam pipes to keep it at a high temperature and the peaches after going into here are carried by an archimedial screw up through the conveyor and dropped on to the shaker-table which is shown in the sketch.

Q. The shaker is not disclosed in that same form in the photograph?

A. It is hard to tell just exactly as to any of the photographs, the comparative sizes.

Q. I see it is.

A. The perspective on that—it is taken at an angle so that it is hard to get any idea.

Q. The peaches come up out of this scalding up through this conveyor and come down through here to that table? A. Yes.

Q. I see what you mean by the different parts of the apparatus being set at right angles; this runs up this way and this comes out this way (illustrating).

A. That is set at right angles there; you have the movement of the peaches at right angles, and they

(Testimony of Melville E. Dunkley.)

do the same in the outfit shown in this other sketch. Referring to the sketch again it is very evident that after the peaches are ejected on to the table or shaker-table shown here in photograph B-3, this is shaken by the Pittman action; this is an offset from the section here, and I think you can see it in the photograph, about how that is operated; B-6 shows that crank of Pittman and the arm which engages the shaker-table.

The COURT.—Q. Is it an upward motion?

A. No, it is a horizontal motion, this way; you see this, by this turning, it will operate this arm like that, and the shaker-table is carried evidently on pivoted arms which are shown in photograph B-2; in B-6, the shaker-table is shown as taken off from the waste-tank and the arms are shown as extending [58] just below the discharge of the hopper or the scalding; these are the front shaker arms which are evidently pivoted down here, so that it allows that shaker to move back and forth; these shakers are as a rule operated with considerable rapidity; the design of the shaker-table would naturally move the fruit forward; the top of it is serrated with depressions and as it shakes the fruit forward, it would not let the fruit come back, so that it would—

Q. —Is this a representation—

A. —of a cross-section.

Q. Of a cross-section? A. Yes.

Q. Upon a uniform level throughout? A. No.

Q. This is one offset here?

A. These small offsets are to keep the fruit from

(Testimony of Melville E. Dunkley.)

going back as it is carried forward; this large offset shown in the figure 1 is the method of turning the peaches so as to present all sides to the sprays; that is in use in other devices; as the fruit reaches that point it falls and turns over.

Mr. CHAPPELL.—Q. Have you seen shaker-tables similar in design to those in operation in peeling machines? A. Yes.

Q. Considering the operation of the device as you have explained it, as you understand it, do you consider the same to be similar to the operation of the Dunkley machine as pointed out in the claims of the patent in suit?

A. I can see no reason why the operation and the results and a great deal of the method of carrying out the results are not the same.

Mr. CHAPPELL.—Unless your Honor has some further questions to ask, I will close the direct examination.

Cross-examination.

Mr. WHITE.—Q. Mr. Dunkley, you said you were not allowed [59] to see the interior of the grass-hopper over at the Lorenzo plant. Will you please explain whether that was due to the physical characteristics of the device and not to any opposition on our part to let you see everything there?

A. I did not necessarily infer perhaps that it was from opposition upon your part; I asked however to see in there and was told it would be unnecessary; that really I think makes no difference whatever.

(Testimony of Melville E. Dunkley.)

Q. State all the functions performed by the rotary brushes KK-1 and the belt-brush H in the Dunkley machine of the patent in suit when the same is operated.

A. I would like to refer to that large drawing. From figure 3 of the patent drawings belt-brush 8, is the conveyor which carries the fruit through the machine and brushes KK-1 are the brushes which act alternately upon the specimens of the fruit as they pass through and give them a whirling or spiral motion as they go through the machine.

Q. That is a statement of all the functions performed by those brushes in the operation of that machine; is that correct? A. Yes.

Q. Those brushes then do not perform the function of removing disintegrated skin from the peaches as they pass along on this conveyor-belt; is that correct?

A. These brushes do not remove the disintegrated skin from the peaches any more than that anything that they may touch may abraid and remove small particles of the skin, no.

The COURT.—You mean they are not the efficient—

A. They are not the efficient means; there will be particles of the disintegrated skin removed perhaps, as they violently hit the edge of the hopper or by anything which they come in contact with, but the brushes themselves will perhaps [60] mark the peach as the peach touches it, but the peeling is done by the brushes.

(Testimony of Melville E. Dunkley.)

Mr. WHITE.—Q. You do not mean that?

The COURT.—Q. By the sprays?

A. I mean the peeling that is done by the brushes does not amount to anything at all.

Mr. WHITE.—Q. I suppose the action of the brushes tends through the agitated manner in which the peaches pass between them to have a loosening effect upon the skin, make it more readily removable by the jets?

A. To some extent, but I think there is a wrong idea as to the condition of the skin of the peach after it has been disintegrated; the solution of caustic soda as it acts upon the skin is a disintegrating more under a chemical standpoint; it changes the cohesive particles of the skin into a glutinous substance which adheres very closely to the flesh of the peach, and the removal of this in my mind would be more like the removal of a lacquer paint; if you undertake to remove it by jets of water; you might be able to do it, but you would take off a little at a time. Now, as the brushes, as they touch this, may move this—it is more like a very heavy solution of gelatine than anything else that I can describe, and at times you cannot even wash it off with the use of your hands without giving it a great deal of friction in order to get it off.

The COURT.—Q. This disintegrated skin?

A. This disintegrated skin; the idea has been I think, that this lays upon the flesh of the fruit in pieces more like the scalded skin of tomatoes; it is not so; it is completely disintegrated, using the

(Testimony of Melville E. Dunkley.)

chemical idea of disintegration.

Q. It is not then simply broken up and disintegrated into [61] more or less irregular particles? A. No.

Q. It is a sort of mass?

A. It is a sort of a mass, yes.

Q. I had gotten the idea that the action of the bath was to disintegrate it in the way that that term is usually applied, that is, by breaking it up into more or less small particles and giving an opportunity for the action of the water to tear it from the flesh of the peach.

A. That is not the true way however that it is acted upon; this is a chemical action that takes place.

Q. It reduces it to a glutinous mass or paste?

A. Yes.

Q. That covers the exterior where the skin had been?

A. A single jet of water acting upon the surface of the peach upon which the skin has been treated will leave a path according to the size and force of the opening, a very distinct path of clean peach flesh, across the surface of the peach.

Q. Wherever the water strikes it?

A. Yes, if the force is sufficient; it has been impossible to wash the skin off by the usual washing method of laving or merely putting water on it to rinse it.

Mr. WHITE.—Q. Assume that in the operation of the Dunkley machine the water was shut off from the spray-pipes G, what would happen?

(Testimony of Melville E. Dunkley.)

A. You would get the fruit through the machine—that has happened many times—you would get fruit through the machine that was not peeled.

Q. Then it is your opinion that the Dunkley machine would not be a practical machine unless the water was issuing from the perforations of these spray-pipes G, for removing the disintegrated skin; is that correct?

A. It would do practically no work at all unless the water was under considerable pressure. [62]

Q. I understand that in the operation of said machine that the water being shut off from these perforated pipes, you would not get peaches peeled sufficiently to make them a commercial article; is that correct? A. No.

The COURT—Q. Without the action of the water-jets the peaches would not deliver in a merchantable state? A. No.

Mr. WHITE.—Q. As I understand you, that machine, without the operation of these sprays would be a worthless proposition and could not be used commercially; is that correct?

A. I think that is very correct, yes.

Q. I presume that no sane man would attempt to use it in that way, that is, without the sprays issuing from these pipes and playing on the peaches, because of not getting a commercial article, as a result of the operation of the machine; is that correct?

A. There have been a number of machines that have used the brushes and wet the brushes and used

(Testimony of Melville E. Dunkley.)

more or less water upon those, but however, not having the force to remove the skin, I believe that the majority of them have been given up as being impracticable.

Q. Assuming that the peaches issuing from the rotary drum 5, of the machine disclosed in exhibit "A" of the stipulation are peeled completely, what function if any is performed by the sprays issuing from the spray-nozzles 8, on the fruit, as the same is carried along by the conveyor and dropped on to the elevator under these sprays?

The COURT.—What are you referring to?

A. I think the prime idea of these sprays 8, is to cool the peaches again after they have come from their heating bath in the blanching-box 7.

Mr. WHITE.—Q. In your opinion are those sprays and that [63] conveyor and that elevator the equivalent of this brush H, the rotary brushes KK-1 and the spray-pipes G of the Dunkley patent and perform the same function in the same way?

A. In my opinion the equivalent to the belt-brush H, the rotary brushes KK-1 and the perforated pipes G, is the cylinder and the sprays inside; the steam-box or blanching-box 7, if water either hot or cold was used in the spray-pipes shown in there, might have a similar effect.

Q. I do not believe you have answered the question.

The COURT.—He has answered negatively that idea because he says the equivalency rests in this rotating cylinder here with the jet in there.

(Testimony of Melville E. Dunkley.)

Mr. WHITE.—Q. I understand then your answer is no, that they are not equivalent; is that correct?

A. I would rather let my answer stand as it was.

Q. Instead of stating whether or not these devices are equivalent you have pointed out other devices in that machine which in your opinion are equivalent.

A. I also covered the blanching-box 7 and the spray-pipes as shown.

Q. I ask that you answer directly whether or not the sprays 8 and the conveyor and the elevator leading directly thereunder in the machine shown in exhibit "A" of the stipulation are the equivalent of the brush-belt 8, the rotary brushes KK-1 and the spray-pipes G of the Dunkley Patent, and perform the same function in substantially the same way?

A. I do not understand your question.

Q. I am simply asking you if those three instrumentalities shown at that particular point in this machine of exhibit "A" are the equivalent of the three instrumentalities mentioned in the Dunkley patent, to wit, the brush-belt, the rotary [64] brushes and the perforated spray-pipes?

The COURT.—What are you referring to as the three instrumentalities in exhibit "A"?

Mr. WHITE.—The conveyor delivering the peaches to the elevator directly under the spray-pipe 8; there is a conveyor coming out of the steam-box and that dumps the peaches on to the elevator leading up to the grader and two sprays play respectively

(Testimony of Melville E. Dunkley.)

on the peaches as they are coming over on that conveyor and as they are going up on the elevator.

The COURT.—His answer as I understand it is that the process by which they are put through the rotating drum 5, and the blanching chamber, as he calls it, is an equivalent process. That is what I understood him to say.

Mr. WHITE.—He still has not come to that particular point in the machine at which particular point the peaches have already been peeled?

The WITNESS.—Mr. White, excuse me, but there are many sizes of peaches that can go through that drum without being peeled; that drum has a maximum capacity for one thing.

Q. My question assumed that the peaches were completely peeled at the time that they left the drum 5 shown in this exhibit "A," and upon the assumption I ask you to state whether or not these three instrumentalities that I have referred to in this exhibit "A" are the equivalents of the three instrumentalities shown in the Dunkley patent, to wit, the conveyor brush, the rotary brushes and the spray-pipes?

A. I do not believe that I understand you at all, for the simple reason that if the peaches were already peeled, I do not see what difference it would make as to operating upon them again; if they are already peeled why should you operate again anyway?

The COURT.—To put the question in a different way: where [65] do you find in the device of the defendant here the equivalent function performed by the spray-pipes H and brushes KK-1?

(Testimony of Melville E. Dunkley.)

Mr. WHITE.—If your Honor please, that is not the point.

The COURT.—That is what I am asking. The spray-pipes G and the rotary brushes KK-1? Where do you find the equivalency of the function performed by the rotating and travelling brushes in your device with the action of the spray-pipes—where do you find that equivalent function in the defendants' device which you have been discussing?

A. Particularly in the action of the drum 5 and the spray-pipes 6, supplementing however that this action is also carried on to a more or less extent by the spray-pipes in the so-called blanching-box 7, and the cooling spray shown at the end of this blanching-box.

The COURT.—That is what I gathered from your answer but that is not what Mr. White wants evidently.

Mr. WHITE.—I am assuming that these two are in the opinion of the witness full equivalents. Now, I am asking about some other instrumentalities and whether or not he finds in the Dunkley mechanism any equivalent for these additional instrumentalities which are present in this machine of exhibit "A," said instrumentalities being the spray-pipes, the conveyor and the elevator which are in juxtaposition just below the spray-pipe?

A. I understand I believe. In Eastern peaches blanching is seldom done. Now, the blanching-box 7, would not be used in the east unless it was used with water-jets; the cooling with the spray-pipes 8,

(Testimony of Melville E. Dunkley.)

would perhaps be taken care of in the sprays in the pipes G; the peaches are hot, the same in the Dunkley machine as they are in this machine, but they are cooled really twice in this machine; the blanching of the [66] California peach is done to set the color; I know very little about the blanching end of that; however, the pipes as shown in this blanching-box, I don't know whether they were connected by steam or water or anything about it; the only thing that I know is, from the information that I got while at Lorenzo; if they were connected with water they would have more or less action.

Q. I am not talking about that steam-box, Mr. Dunkley. I do not care what happens in there; I am simply asking you whether or not you find in this Dunkley patent any instrumentalities which are equivalent of these sprays operating in conjunction with this portion of the conveyor and elevator directly thereunder, assuming that in the operation of the machine of exhibit "A" that peaches are completely peeled at the time they leave the drum 5?

A. Your question is not very clear to me.

The Court.—Q. What function do they perform, if the peach has been completely peeled?

Mr. WHITE.—They perform a function entirely foreign to the peeling of peaches.

The COURT.—Certainly.

Mr. WHITE.—Cooling the fruit, assisting in removing the solution.

The COURT.—That would not affect the infringement if it existed in the previous part or por-

(Testimony of Melville E. Dunkley.)

tion of the machine that did the peeling of the peach, would it?

Mr. WHITE.—That is true. I wish to know whether or not in the opinion of this witness they are including these instrumentalities as a part of the mechanism which goes to make up the infringement, or whether they eliminate them. That is what I want to find out. [67]

The COURT.—I must confess I did not understand what you were getting at, because I do not understand that infringement is destroyed by adding something to a combination that is not necessary to perform the function that the device of the patent performs.

Mr. WHITE. —That is correct; my question in no way relates to the question of infringement. I simply wish to know whether or not—

The COURT.—I did not understand what you were trying to get at.

Mr. WHITE.—I was simply trying to find out whether or not this patent in any way covers the combination, the sprays and means for conveying the fruit thereunder, and means for presenting all sides of the fruit, to the sprays, regardless of whether or not the function performed by these instrumentalities is a peeling function or some other function. That is what I am trying to get at. Now, I ask the witness to answer the question in the light of my explanation.

A. I do not know yet what I am supposed to answer. It seems to me that I have told in my previous

(Testimony of Melville E. Dunkley.)

testimony, in describing that machine, that what I supposed was the function of the spray-pipes 8; I do believe however that if the peaches were carried by this conveyor-table underneath these sprays and there was sufficient force on the sprays and that the peaches had not been peeled, that it would aid in the peeling.

The COURT.—But his question assumes that the peach has been completely peeled at the point where it is delivered into this conveyor?

A. Then so far as peeling is concerned it would have nothing to do with the peeling of that peach.

Mr. WHITE.—Q. In view of that answer, would said [68] instrumentalities in exhibit “A” perform a function corresponding to any other instrumentalities in the Dunkley Patent?

A. It would perform the function of cooling the peaches; it would perform the function of cooling peaches which the sprays in the Dunkley machine also do.

Q. Does the pressure of water required in the operation of the Dunkley machine vary at all in relation to the strength of the caustic soda solution?

A. That is a hard question to answer, Mr. White. I think the answer to that question can be given more intelligently by stating that the condition of the peel of the peach—if it is not given sufficient strength or time for the caustic soda to act on it—is really in about the same condition that it was before it was acted upon at all, and while you might be able to remove that by raising the pressure of your jets,

(Testimony of Melville E. Dunkley.)

that we never have had any experience with a variable pressure for the simple reason that we kept the caustic solution strong enough at all times to do the work; you can overdo this rather than underdo it; that is the best practice.

Q. You said that you never had any experience with varying pressures of water in the operation of the Dunkley machine?

A. Not voluntarily varying the pressures.

Q. I am asking as to the fact?

A. We have used pressures of from perhaps 40 pounds to 125 pounds.

Q. And when you increase the pressure from 40 pounds to 125 pounds were you enabled by reason of such change to use a caustic soda solution of less strength?

A. The pressure which gives you the best results in the use of all of the work of this output, that is, that allows you to use [69] the minimum of caustic and the minimum of water consumption from our experience has proven to be around 70 to 75 pounds.

Q. Then the pressure of water required to get the best results varies in accordance with the strength of the caustic soda solution. Is that correct?

A. I did not say that.

Q. Is that correct? A. No.

Q. Answer it yes or no?

A. No, it is not correct.

Q. If you used water under pressure of 40 pounds, with a certain strength of caustic soda solution and get good results and then increase that pressure up

(Testimony of Melville E. Dunkley.)

to 100 pounds, will you still have to use the same strength of caustic soda solution to get good results or can you get the same good results with a weaker solution of caustic soda?

A. We made many experiments along that line, and it has always been rather doubtful in my own mind whether the different results were due to the increase in pressure above say 70 pounds, or to the difference in the fruit which you are working on; that makes a big difference; I would not want to answer that question.

The Court.—What counsel is asking you is this: does the greater pressure enable you to use a weaker solution in the disintegrating process?

A. The pressure from 40 pounds, raising, to 70 will allow you to do that, and will save the use of caustic soda; I do not believe that the raise from 70 pounds up will be of very much benefit.

Mr. WHITE.—That is all.

Redirect Examination.

Mr. CHAPPELL.—Q. I note in the patent drawings that the pipes G project somewhat beyond the brushes. Is there any [70] purpose in that?

A. The idea was to give more continued time and final washing or cooling to the peaches as they left the machine—in other words, to completely free them from any loose particles of skin which might rest upon them. The pipes in this machine however were not placed in there as they have been in practice.

The Court.—Q. That is in the model.

A. In this model the pipes should be about 6 inches

(Testimony of Melville E. Dunkley.)

longer than they are in place here.

Q. So that the process of spraying will continue after the peaches have left the influence of the brushes? A. Yes.

Mr. CHAPPELL.—Unless your Honor has some further questions that is our case.

PLAINTIFF RESTS.

The COURT.—We will take our recess now until 2 P. M.

(A recess was here taken until 2 P. M.) [71]

AFTERNOON SESSION

Mr. LYON.—May it please the Court: in this case the defendants' defense will be the prior invention and prior use, the first of which will be that prior use by the California Fruit Cannery Association at Fresno, California, commencing in the year 1902, and continuing at Los Angeles, California, and elsewhere,

The COURT.—Prior use and what?

Mr. LYON.—Prior use and prior invention, continuing at Los Angeles, California, during 1903, and in that connection we call your Honor's attention to a patent issued to Baker, Chalker and Ferguson, in 1888, for a fruit-washer, and show your Honor that that machine was commercially made, commercially sold and commercially used in the orange and citrus fruit industries in Southern California during 1898, 1899, 1900, 1901, and the years following, and that in the year 1902, Mr. C. J. Vernon, who had been the representative of the California Fruit Cannery Association at Whittier, California, was transferred to

(Testimony of Melville E. Dunkley.)

the California Fruit Canners' Association plant at Fresno, and that he purchased one of these Baker, Chalker, Ferguson fruit-washers and took it with him to Fresno, California, and there installed it in this system or apparatus for washing and peeling peaches. And I say washing and peeling because in our theory of this case the peeling of peaches is entirely or substantially entirely done by this caustic soda or lye bath, the skins being disintegrated by that solution to such an extent that they no longer exist as skins of fruit but solely as a slime or very slippery composition.

We will also in that connection show that the inventor of this machine, this Baker, Chalker and Ferguson machine, was present in Fresno, and that [72] after the use by the California Fruit Canners' Association in 1902, he received an order for three or four of these same fruit-washers and they were installed in the Los Angeles plant of the California Fruit Canners' Association during the season of 1903, and there commercially used. We will show that there was in the prior art many years prior to 1902 the use of the caustic soda bath for disintegrating the skins of peaches; we will show that prior to 1902, and in 1902, the washing of the peaches after the skins had been disintegrated by this caustic soda solution, they were washed off and the fruit cooled by putting the treated fruit in wire baskets and buckets, and sousing them with water and also by turning the spray from hoses on them, so that we will say that all that was done in this art was old

(Testimony of Melville E. Dunkley.)

except the specific use of the washing jets prior to the Vernon use, and we will say that as to the washing jets themselves—

The COURT.—What do you mean by the Vernon use?

Mr. LYON.—That was the California Fruit Canners' Association use in 1902.

The COURT.—By Mr. Vernon?

Mr. LYON.—By Mr. Vernon, who was superintendent of the California Fruit Canners' Association plant at Fresno that year.

And we will say that, as I say, all that that use really amounted to was a double use, as it is known in Patent law, on the Baker, Chalker and Ferguson fruit-washer; in other words, it was simply one of the uses for which that invention was particularly adopted, and in that case we are not required to rely on the principle of law of double use, but we shall show that the Baker, Chalker and Ferguson machine was actually used for that purpose in this particular peach-canning art. [73] We will say that there can be no question of doubt as to the year in which this was done for we will prove that in the Byron wreck of the Owl in 1902, Mr. C. J. Vernon was killed, so that the date is fixed and the machine is fixed by documentary evidence to that extent.

There is another feature of our defense in these cases, particularly set out in paragraph 16 of the answer which is to the effect, and we shall endeavor to prove it, that the Dunkley Company had full knowledge and notice of this prior use by the Cali-

(Testimony of Melville E. Dunkley.)

fornia Fruit Canners' Association, and entered into an agreement with the California Fruit Canners' Association giving that association a free license under this alleged Dunkley Patent in consideration of the California Fruit Canners' Association doing what it could to suppress the knowledge of this prior use by it in 1902 and 1903, and doing what it could to prevent any of its records and any of the witnesses to such prior use within its control from giving us any information.

There is another defense to which we will advert later and use a prior invention by George E. Grier of Pasadena, California; we will show that that is prior to the Dunkley invention, and that the entire Dunkley invention is anticipated by both the Vernon and the Grier use; we will also show by documentary evidence that the particular form of the apparatus in each of its parts is old; for instance, the so-called grasshopper or tomato scalding which is used as a lye bath, the washing tanks, the washing-machine, and each element is separately sold.

The COURT.—This is a combination, is it not?

Mr. LYON.—And that each one of these—

The COURT.—I say, this is a combination, is it not?

Mr. LYON.—Yes. [74]

The COURT.—All the elements are presumed to be old?

Mr. LYON.—We simply say that the particular forms that these men say they used were known at that time in this particular art, so that there will be

(Testimony of Melville E. Dunkley.)

no doubt in the case as to their having the particular kind of machines that they refer to.

We do not contend necessarily that merely a showing that each one of these elements separately considered were old and well known in this art anticipates this patent, but it is only as showing that they were available to them at the time that they said they used them; that for instance the grasshopper was well known and used, and that the conveyors and all those devices were right there in the art.

Mr. WHITE.—The defendant offers in evidence a copy of United States Letters Patent No. 864,944, issued on September 3, 1907, to H. A. Beekhuis for apparatus for removing skins *for removing skins* from fruit and ask that it be marked Defendants' Exhibit "A," Beekhuis Patent. '

(The document is marked Defendants' Exhibit "A," Beekhuis patent.)

At this time, if your Honor please, by way of supplementing the opening statement of Mr. Lyon I desire to call the attention of your Honor to the fact that this Beekhuis Patent was applied for on May 25, 1904, the Dunkley Patent in suit was applied for on November 29, 1904, more than six months later. It is alleged in the answer that this man Beekhuis was the original and first inventor. The law conclusively presumes that the date of application for patent is at least the date when the invention was made; therefore by introducing in evidence this Beekhuis Patent we anticipate the Dunkley Patent and shift the burden of proof to the plaintiff

(Testimony of Melville E. Dunkley.)

in this case to carry back of May 25, 1904, the date of Mr. Beekhuis' invention, [75] because I think it will be admitted that is what is disclosed in this Beekhuis Patent is the full equivalent of what is covered by the Dunkley Patent, so that at this time the burden of proof is shifted to the plaintiff to carry back to the date of the invention.

Defendant offers in evidence a certified copy of the File Wrapper Contents of the Dunkley Patent in suit, and ask that this be marked Defendants' Exhibit "B," Dunkley File Wrapper.

(The document is marked Defendants' Exhibit "B," Dunkley File Wrapper.)

Defendant offers in evidence United States Letters Patent No. 511,709, issued on December 26, 1893, to Ida L. McDermett for preparing fruit for canning and preserving, and asks that it be marked Defendants' Exhibit "C." This patent discloses the use of the lye process for peeling peaches.

(The document is marked Defendants' Exhibit "C.")

Defendant offers in evidence copy of United States Letters Patent No. 549,097, issued on November 5, 1895, to J. Baker, for a machine for cleaning and stalling tomatoes. This patent discloses a type of what has generally been designated as the Grasshopper in this litigation. We ask that it be marked Defendants' Exhibit "D," Grasshopper Patent.

(The document is marked Defendants' Exhibit "D," Grasshopper Patent.)

Defendant offers in evidence copy of Letters Patent No. 464,621 issued on December 8, 1891, to L.

(Testimony of Melville E. Dunkley.)

Cunningham for prune scalding and rinsing machine and ask that it be marked Defendants' Exhibit "E," Cunningham Patent.

(The document is marked Defendants' Exhibit "E," Cunningham Patent.)

Defendant offers in evidence copy of Letters Patent No. 616,284 [76] issued on December 20, 1898, to J. M. Baker, V. A. Chalker, H. G. Baker and L. O. Ferguson, for fruit cleaner, brusher, and washer, and ask that it be marked Defendants' Exhibit "F," Baker, Chalker, Ferguson Patent.

(The document is marked Defendants' Exhibit "F," Baker, Chalker, Ferguson Patent.)

Defendant offers in evidence copy of Letters Patent No. 610,377, issued on September 6, 1898, to W. C. Anderson, for apparatus for preparing prunes for drying, and ask that it be marked Defendants' Exhibit "G," Anderson Patent.

(The document was marked Defendants' Exhibit "G," Anderson Patent.)

We will call Mr. H. G. Baker.

Mr. MILLER.—If your Honor please, on this question of anticipation by prior use for which a large number of witnesses have been called by the defendant, we think that the witnesses ought to be put under the rule, and that those all except the one under immediate examination be excluded from the courtroom; I think it will conduce better to securing a correct statement from the witnesses than if the witnesses listened to the others' testimony.

Mr. WHITE.—I have no objection to that course.

The COURT.—Let all the witnesses who have been

(Testimony of H. G. Baker.)

subpoenaed on the case on that subject retire from the room until they are called.

Mr. LYON.—That rule will be applied of course to the complainant's witnesses?

The COURT.—I have said that all witnesses who have been subpoenaed in the case. [77]

Testimony of H. G. Baker, for Defendants.

H. G. BAKER, called for the defendants, sworn.

Mr. LYON.—Q. Your name is Horace G. Baker?

A. Yes.

Q. Where do you live?

A. At Glendora, California.

Q. How long have you lived at Glendora, California? A. Since 1891.

Q. In what business Mr. Baker, are you now engaged?

A. Contracting and some ranch work, ranching.

Q. In 1898, 1899, 1900, 1901 and 1902, in what business were you engaged?

A. I was engaged for a good portion of that time, in the manufacture of orange machinery and fitting up orange houses.

Q. Are you the Horace G. Baker who is named as one of the inventors in Defendants' Exhibit "F," Baker, Chalker Patent, a copy of which I now hand you? A. Yes.

Q. Were you ever at any time connected with the manufacture or sale or use of machines, embodying this invention of this patent? A. Yes.

Q. When and where?

(Testimony of H. G. Baker.)

A. From about the time this machine was patented until 1904.

Q. In connection with what company was that?

A. It was known as the H. K. Miller Manufacturing Company.

Q. And its principal place of business at that time was Glendora, California? A. Yes.

The COURT.—Where is Glendora?

A. It is east of Los Angeles, 25 or 26 miles.

Mr. LYON.—Q. The H. K. Miller of that company is now dead? A. Yes.

Q. To what extent have the orange washers or fruit washers embodying this invention been manufactured and sold for use and used?

A. What number of machines you mean? [78]

Q. Yes, to what extent generally?

A. I cannot give you the number of machines; I know there were a good many of them.

Q. In what particular line of use were they sold and used?

A. For cleaning oranges and lemons, both for dry cleaning and for washing.

Q. What do you mean by dry cleaning and washing? Please explain to us.

A. We manufactured a cleaner in which there were no sprays used, but the brushes only polished the fruit or knocked off the dust and those things. We also manufactured a washer *in the* sprays were put on to the fruit and washed it as well as the brushes coming in contact with it.

Q. During what years did you manufacture those two types of this machine?

(Testimony of H. G. Baker.)

A. All the time that we were manufacturing them from the first.

The COURT.—Q. What years he asked you.

A. The first machine we manufactured and sold was the year that this patent was issued; that would be in 1898.

Mr. LYON.—Q. For how long did you continue manufacturing these two types of this machine?

A. I continued until 1904, but it was conducted after I was out of it.

Q. Then you in 1904 severed your connection with the H. K. Miller Manufacturing Company?

A. Yes.

Q. And in manufacturing these fruit washers in accordance with this patent, did you provide the spray-pipes as shown therein? A. Yes.

Q. Did you ever at any time meet a man by the name of C. J. Vernon? A. Yes.

Q. Under what circumstances and where?

A. Well, I met him more than once and under different circumstances. The first time I met him was in our town at Glendora, [79] about 1901 and I think the next time I met him, it might have been more than one day, but at the next occasion was in 1902 at Fresno.

Q. Whereabouts at Fresno?

A. At the packing-house where he was in charge, at the cannery.

Q. What packing-house was that; do you remember its name or the name of the company?

A. It was the California Canners Association; I don't know it by any other name.

(Testimony of H. G. Baker.)

Q. Under what circumstances did you come to meet Mr. C. J. Vernon at Fresno, California, at this packing-house of the California Cannery Association in 1902?

A. We had sent him a washing-machine there for the purpose of taking the peeling off of the peaches and he wanted me to come up and look it over and see if he could increase the capacity of his machine.

Q. What kind of a machine was that?

A. It was a machine built along the lines of this last patent, having two brushes and a belt through the center of it to convey fruit through it, and a spray-pipe above to direct water on to it, and operated by power.

Q. Now, referring to this spray-pipe that you say was on that machine, please explain just the position of its location and how the spray from said pipes was directed.

A. The spray-pipe was immediately directly above the conveyor-belt which passed through between two roller brushes, the full length of the machine, both the conveyor-belt and the spray-pipe; the spray-pipe was above and had three rows of apertures along it, the full length of it, one directing the water straight down on to the conveyor-belt where the fruit would be, and the other two a little to the side, one on either side, directing the water to the side or maybe toward the brushes. [80]

Q. How did that pipe as so installed in that washer that you sold to Mr. C. J. Vernon compare with the pipe as shown in this patent Defendants' Exhibit "A"?

(Testimony of H. G. Baker.)

Mr. MILLER.—We object to this cross-examination; this is leading and it is a question as to anticipation and construction of a machine; we have no objection to the witness describing the machine in full and in detail, but we do not think it is proper to call his attention to a particular document and ask him if it was like anything of that kind.

The COURT.—I think that the better method is to ask him to describe his machine, and the Court will say whether it was the same principle or not. It is not for the witness to say whether it is the same principle.

Mr. LYON.—Q. When you arrived at Fresno to see Mr. C. J. Vernon at this California Fruit Canners Association place in 1902, for what if anything were they using this brushing-machine or washing-machine?

A. They were using it to remove the peel from these peaches.

Q. Can you explain to us what the apparatus and process was that they were using there at that time, when you first went there on that trip?

A. Well, just what apparatus do you refer to?

The COURT.—The one that you sold him.

Mr. LYON.—The whole line of apparatus that they were using.

The COURT.—Q. You said you sold him the machine.

A. There was more apparatus there than that machine, you see.

Q. But he is directing your attention to what you sold him, the machine that you manufactured under

(Testimony of H. G. Baker.)

this patent; that is the only one that we are concerned with.

Mr. LYON.—My question was directed to the way in which [81] this machine was connected, and what he observed as to how they were using this brushing-machine.

The COURT.—Then you should frame your question in that way. I was bound to assume you were asking him about the machine he sold them, because he was talking about that.

Mr. LYON.—Q. I wish you to describe where this machine you sold Mr. Vernon was when you arrived in Fresno and what apparatus it was connected with.

A. It was connected, installed in a line of other machinery; the first thing, they dumped their peaches into a scalding machine which they called a grasshopper there in the packing-house, and it went out of that scalding machine into a tank of water and was carried out of there by a conveyor into the washing-machine, and after passing through the washing-machine it was introduced into another tank of water and on to belts and on to the cannery to the girls who put it into cans.

Q. When you arrived there were they using this machine on whole peaches or on cut peaches?

A. I arrived there at the packing-house early in the morning of this particular time I speak of, and when they started the machine that morning they put in whole peaches, and they very shortly changed to cutting these peaches into halves, because they could not cut them by hand and take the pits out afterwards, so they cut them first.

(Testimony of H. G. Baker.)

Q. Now, you say you were called up there to see if you could give this machine more capacity. Please explain what you meant by that and what if anything you did.

A. The capacity simply meant that they would get more fruit through the machine in a given time; what I did to accomplish that end was two or three different things. Do you wish me to [82] tell what those things were?

Q. Yes.

A. This belt-conveyor could be adjusted up or down as regards axis of the brushes, and by raising that belt-conveyor it brought the fruit so high on the brushes, that they did not act so much upon the fruit, and therefore would not retard the progress of the fruit through the machine so much, and more fruit would go through on that account; by putting the brushes a little wider apart more fruit would pass through because they would act less upon it.

Q. Now, in that washer that was so installed—

A. —Then one other thing we did; when that machine was sent up there from the shop the brushes both rotated inwards on the conveyor, or the brushes rotated in opposite directions, both inward and downward on the conveyor, and I shifted one of the axis on the front end of the machine so that they both revolved in the same direction, and that also turned the fruit and let it go through much faster.

Q. In building that machine do you remember any question that you had in mind as to its use in this kind of an operation or any particular device that

(Testimony of H. G. Baker.)

you put on that in anticipation of any trouble with it? A. Yes, I do.

Mr. MILLER.—We object to what he had in his mind.

The COURT.—Yes. Do not suggest anything of that kind.

Mr. MILLER.—Let him describe the machine.

Mr. LYON.—Q. Describe any other part of the machine—

The COURT.—Do not suggest to your own witness things of that kind because it always gives rise to objection and it is improper.

A. This machine had a device underneath the brushes a good deal like the teeth of a cutter, although made of wood and metal, and these teeth extended into the bristles of the brush on the under [83] side to take out the skins of the fruit out of the brush as I suppose they would probably clog in there, but in actual practice they did not do it at all.

Mr. LYON.—Q. What do you mean by they did not do it at all?

A. They did not adhere to the brush, any part of the skins.

Q. Now, did you see that line of machinery in actual operation after making these adjustments?

A. Yes.

Q. Please describe to us what you observed there in regard to this use of this combined apparatus for peeling peaches.

A. Well, these peaches after they started this and tried it on the whole peaches, just a short time, they

(Testimony of H. G. Baker.)

could not handle these peaches and pit them after they were run through this line of machinery, and they cut the peaches and took the pits out of them first; they were freestone peaches they were handling then, and they scalded them and ran them through all this machinery after they had been sliced or cut in two, and when they came out of the machine they seemed to be perfectly clean of the skin or any peel on.

Q. Did you observe the action of the fruit in passing through the washer portion that you sold to Mr. Vernon? A. Yes.

Q. Please describe that.

A. The fruit, as I have said, came into this machine from a conveyor, after coming out of a tank of water, and it came out of there in more or less of a continuous stream or body, and was put in between these brush rolls on this belt-conveyor and they went down there in a continuous stream; if the fruit was there to be handled it was going right through in a continuous stream, not one at a time but bunched up considerably, two or three or four deep lots of times, and it revolved of course; [84] this fruit did not simply go along through that motion because it had all kinds of motion as it went through there.

Q. Describe the action of the water and of the brushes on the fruit, as you observed it at that time.

A. The brushes themselves turned this fruit over as they touched it, and the water washed the skins off; there was not much left but this disintegrated soft pulp, like a pulp almost.

(Testimony of H. G. Baker.)

Q. Can you describe to us the spray or jets of water as you observed them on that machine at that time?

A. I have described the direction of these jets; these jets hit the fruit, and one of them hit directly on the fruit; the others possibly hit the edge of the fruit as it went down and sure hit the brushes.

Q. After this trip to Fresno, California, did you have any other dealings with either Mr. C. J. Vernon or the California Fruit Cannery Association?

A. I did not have any dealings, as I remember, with Mr. Vernon; I saw him afterwards at Glendora; I had dealings or our company had with the California Cannery Association, yes.

Q. When?

A. I think it was that same fall they ordered some machines of us, that same fall of 1902, and they were delivered early in the season of 1903; I am not sure that the orders might not have been given in 1903; I am not sure about that; it might have been in the latter part of 1902; I do not know the machines were delivered in 1903.

Q. You say some machines; what kind of machines?

A. They were machines built very much on the same order as the one I described except they had a greater number of brushes in them and a greater number of belt-conveyors in them, and also sprays; otherwise they were substantially the same machine.

[85]

Q. You say each of these machines had a greater

(Testimony of H. G. Baker.)

number of brushes and a greater number of the carrier belts?

A. Yes, and a greater number of spray-pipes.

Q. How many brushes did each of these machines have?

A. I think they each had four brushes, and three belt-conveyors for them and three spray-pipes.

Q. Just describe how these spray-pipes were relative to the conveyor and other apparatus.

A. In the same position as the first one above the belt-conveyor and the jets of water directed in the same manner.

Q. Do you know to what places these machines were delivered by your company in 1903?

A. I do not know at this time, but I am sure about one place; one went to Los Angeles; I don't know where the others went.

Q. Went to what company in Los Angeles?

A. The California Fruit Cannery Association.

Q. About what time in 1902 was it that you were up at Fresno and saw Mr. C. J. Vernon at this California Fruit Cannery Association plant and adjusted this machine and observed those operations?

A. I think that must have been in July.

Q. Is the H. K. Miller Manufacturing Company now in existence? A. Yes.

Q. It went into bankruptcy some years ago, didn't it? A. Yes.

Q. And you made a search for these books at this early date? A. Yes, I did.

Q. Were you able to find any of them? A. No.

(Testimony of H. G. Baker.)

Mr. LYON.—You may cross-examine.

Cross-examination.

Mr. CHAPPELL.—Q. Do you know what finally became of the machine that you assisted in installing at Fresno? A. No. [86]

Q. Do you know whether any part of it is in existence now, or not? A. No, I do not.

Q. Did you take part in installing the machine at Los Angeles? A. No.

Q. Do you know what became of that machine eventually? A. I do not.

Q. Do you know whether it ever worked there or not, of your own knowledge?

A. Not of my own knowledge; I never saw it after it left the shop.

Q. You stated that three of these machines were made? A. Yes, they made three.

Q. You don't know where the third one went?

Q. I don't know where the other two went, either of them; there were three.

Q. You have referred to one at Fresno and one at Los Angeles; were there two besides that?

A. Yes.

Q. You have no recollection of where they went?

A. No.

Q. Ever make any of those machines for anyone else to peel peaches with? A. No.

Q. For how long a time did you see the machine in operation at Fresno?

A. A part of two days; one day and a part of the second day.

(Testimony of H. G. Baker.)

Q. Did you see any of the peaches go into the cans after they were peeled by this machine?

A. Yes, I did.

Q. Do you know whether any lye went in with them?

A. I could not tell that; I don't think I could answer that question correctly.

The COURT.—Q. Don't you know where these other two machines went, if they were ordered from you? How did you come to know that one went to Los Angeles and don't know where the others went?
[87]

A. The California Fruit Canners Association had packing-houses at different places over the country, and they ordered these machines, and I just remember that one went to the Los Angeles plant.

Q. They were not ordered for Fresno, any of them?

A. Not this three second lot of them.

Q. I understand; that is what I mean, the three—second lot.

A. I am sure they did not go to Fresno; I feel sure about that, but I could not tell you where they did go; I don't know.

Q. These machines, as I understand you, were manufactured by the H. K. Miller Company?

A. Yes.

Q. You were connected with it at that time?

A. Yes.

Q. None of its books to be had?

A. The H. K. Miller Company, a few years ago—of course, I have not been connected with it, as I told

(Testimony of H. G. Baker.)

you, since 1904; a few years ago, maybe three or four years ago, they went into bankruptcy, and I don't know what became of the books unless they were turned over to the proper authorities.

Q. They would go into the hands of the referee in bankruptcy, would they not?

A. I suppose so. I went to the family and I explained—I went to Mr. Miller's residence, or what had been, and inquired of them about it, and they looked for those records and could not find a thing connected with this brusher business whatever.

Q. No inquiry as far as you know has been made of the bankruptcy officials?

A. Not so far as I know.

Mr. CHAPPELL.—Q. Considering the cylindrical brushes to which you refer, what material was the brush made of? A. It was made of horse-hair.

Q. How long was the fibre of this brush? [88]

A. The hair of this brush was about an inch and a quarter in length extending out from the wood.

Q. What was the diameter of the brush?

A. I could not tell you exactly, but I think it was about 7 inches, that is, the wood, as you would say, and the brushes in the machine.

Q. Is the wood part 7 inches in diameter?

A. No, the wood and bristles together, hair.

Q. How long were those brushes?

A. We made them different lengths; the first machine that went to Fresno was 6 feet long, the brushes, or within an inch or so of it, and the other brushes that we made for them later, these other three that

(Testimony of H. G. Baker.)

I have mentioned, were much shorter brushes, I would say about 4 or $4\frac{1}{2}$ feet, possibly not over 4 feet.

Q. How large was the pipe that delivered the water?

A. About an inch and an eighth in diameter.

Q. Inside or outside? A. Inside.

Q. How large were the holes that were put in it?

A. The holes in this particular machine that went to Fresno were—it was a sheet-metal pipe, galvanized iron, and they were punched in that with a small punch, and I would say they were somewhere from one thirty-second to possibly one-eighth inch in diameter.

Q. How many holes were there?

A. I could not answer that exactly; they were in a number—they were about an inch or an inch and a half apart in the row, and there were three rows.

Q. How large was the pipe that supplied the water to this spray-pipe?

A. The connection that we put on is all that I can really answer that by; at the upper end of the machine, the [89] front end of it this sheet-metal spray-pipe was soldered on to a galvanized iron water-pipe, a short piece, and this water-pipe was inserted in it a short ways and soldered fast to it, and that pipe was a $\frac{3}{4}$ -inch pipe, that is, $\frac{3}{4}$ inside measurement and about one inch or $1\frac{1}{8}$ inch outside measurement.

The COURT.—Q. It was smaller than the spray-pipe?

(Testimony of H. G. Baker.)

A. Yes, smaller inside and about the same dimensions outside.

Q. You said the other was about an inch and a quarter?

A. An inch and $\frac{1}{8}$, such a matter inside, and the other went inside, slid right inside.

Mr. CHAPPELL.—Q. You don't know what that was connected to outside, what the source of the water was? A. No, I do not know.

The COURT.—Q. You saw it connected up, when you saw it operating in Fresno—you saw that, did you not?

A. Yes, they had a pipe connected there, but I understood him to mean did I know where this water came from.

Mr. CHAPPELL.—Q. I wish to know what the water supply at Fresno was, where did they get it?

A. I don't know where they got it; I don't know where the water supply was, whether they had it with a tank or pump or city water; where they got it I don't know.

Q. You don't know anything about what the pressure was at the source of supply?

A. No, I do not know; as I recall it, it was not a great pressure, but I don't know where they got the water.

Q. Where you installed the machines for washing oranges what was the usual practice and what was the size of pipe made use of?

A. About the same size pipe for sprays, about the same thing, as near as we could make them, and the

(Testimony of H. G. Baker.)

usual plan was to connect it with the city water wherever they were installed. [90]

Q. You don't know whether it connected direct to the city water or whether there was an intermediate tank to supply it; is that right?

A. I don't now know of any intermediate tank in any connection that I ever observed or had anything to do with.

Q. According to what you have described here, there was one row of holes that would deliver water straight down on to the line of travel of peaches or fruit, was there not? A. Yes, there was.

Q. And the other would deliver off to each side, the other two?

A. They would deliver the water to each side of the center row of holes, yes, and deliver it on to the brushes or on to the fruit if there was enough fruit in there.

Q. How close did those brushes come together at the point just under the pipe?

A. There was room for a belt and also a support for this belt, and that was about an inch and a half, from an inch and a quarter to an inch and a half in width; they could either be brought up to that, touching it, or the brushes could be put further away and leave a little more space there. The brushes could not be brought closer together much than this belt and the support that kept it from sagging down; there was a support underneath and when the brushes came up and touched that it was about as close as you could get them together.

(Testimony of H. G. Baker.)

The COURT.—Q. I thought you said that the fruit would go through in two or three lines, two or three deep.

A. Well, they did pile up on that thing; they didn't all go down right on that belt. If you put it in there fast enough it would pile up more or less.

Q. How do you mean pile up, spread out in two or three lines or two or three deep; how?

A. Both ways. [91]

Q. Then the brushes must have been more than the distance apart you have mentioned?

A. We could put the brushes further apart; that is what I say, you could give some space between this belt on each side, a small space there, on each side of this conveyor, and yet it would act all right.

Mr. CHAPPELL.—Q. How many whole peaches do you think you saw go through there?

A. I don't think I saw more than two or three boxes, three or four boxes, possibly, not very many.

Q. Then immediately the peaches were cut in halves and you only saw halved peaches after that?

A. After that I only saw halved peaches.

The COURT.—Q. Mr. Baker, about how long had this apparatus been in use there at Fresno before you went to see if you could not increase its capacity?

A. Well, we had shipped it a week or so before this, possibly ten days, and they had tried it a little before I went, just to what extent they did that I could not say; not very much, however, I don't think.

Q. Hadn't they tried putting whole peaches

(Testimony of H. G. Baker.)

through it before you got there?

A. Yes, I think so.

Q. How did they come to make the change from whole peaches to half peaches while you were there?

A. When I was there they had a force of folks in the packing-house and they wanted to go to canning this fruit, and when they found out they could not cut these peaches—

Q. —Hadh't they found that out before?

A. I do not think so; I do not think they had tried it; in fact I do not think they had put any quantity of fruit through this machine at all before I was there, just a little; that is [92] as I understand it.

Mr. CHAPPELL.—Q. Did you make any effort to follow up these machines to see if there was any more business in that line of peach peeling for your company?

A. I personally did not; I don't recall now what was done by Mr. Miller exactly; personally I did not.

Q. When did you sever your connection with the company?

A. Well, I sold my interest in the company sometime in 1903, probably the latter part of 1903, but I worked for the company until the season of 1904.

Q. How many of the machines did they put out for oranges in 1904; do you remember?

A. How many machines did they put out?

Q. Yes, for oranges. A. I could not tell you.

Q. Did you put out a considerable number of them?

A. Yes, they put out quite a few of them.

(Testimony of H. G. Baker.)

Q. But they put out none in 1904 for peaches; is that right?

A. Yes, I think so—yes, that is right, so far as I know.

Q. Never heard any more call for the machines for peeling peaches after your Fresno trip and the three that were supplied to the California Fruit Canners Association?

A. They were delivered to them in 1903; that is the last that was put out, and so far as I know the last that was called for.

Q. You don't know how any of these were used or how successful they were? A. I do not.

Q. Why were the brushes put on these machines, if you know, the one at Fresno—why did they put brushes upon it?

A. You mean were they put on at Glendora or Fresno? [93]

Q. Why did you put on the brushes on the machine that was used at Fresno?

The COURT.—Q. He is asking you why you put the brushes on.

A. I did not understand the question. I supposed that it needed them to help remove this peel; that was my idea of it.

The COURT.—Let me see that patent, will you?

A. Yes (handing).

Mr. CHAPPELL.—Q. To what extent was water used when you treated oranges with this machine?

A. We used quite a bit of water.

(Testimony of H. G. Baker.)

Q. What was the purpose of the brush on the orange machine?

A. To help remove the dirt and any foreign substance on the orange.

Q. Did you ever find on the orange machine that you could clean the orange without the brushes?

A. No.

Q. Always had to use the brushes to clean the oranges?

A. As far as I know; I never saw them run through without brushes.

Q. What was the difference between the two kinds of orange machines that you made? You say you had a dry machine and a wet machine?

A. They were made on the same principle except that the brushes in the dry machine had not so much hair on them; they were what we call lighter brushes; they had not the spray-pipes and did not use the water with the dry machine.

Q. That is to say, when you used the water, you used a heavier brush, did you? A. Yes.

Q. How much heavier, do you think?

A. I could not now tell; I did know just how much hair went in it, only I have forgotten, but there was considerable more bristle used in the wet machine brush because the brushes got soft with the water action on them, and they would not do the work. [94]

Q. How fast did you revolve the brushes on those machines, how many revolutions a minute?

A. They did not revolve so very fast; they revolved

(Testimony of H. G. Baker.)

rather slow; I could not give you now the number of revolutions.

Q. In your patent, you mentioned something about their running so fast as to throw water off; do you think they ran fast enough for that?

A. They did throw the water off to some extent, just a little, of course they did; but they did not sling it right off; they were perfectly wet all the time, the brushes; and when you would stop the machine, shut your water supply off, there would some water fall out of the brush; it would not be slung out by the rotation.

Q. What was the rate of travel of the conveyor-belt?

A. I don't know that, but it was not so very fast.

Q. Will you please give me the names of the managers and those that would be likely to know about the machines of this company that you refer to?

A. What company?

Q. The company that was making this machine, the H. K. Miller Company.

A. I helped manufacture it as long as I was there, and Mr. Miller was in charge of the business.

Q. He is now dead? A. Yes.

Q. Who else would know about it?

A. Would know about these peach machines?

Q. Well, about the machines, either the orange machines or the peach machines.

A. That worked for him, do you mean?

Q. Yes, who was familiar enough with the business to know about the machines.

(Testimony of H. G. Baker.)

A. There is a man that worked for the company in Riverside, I don't know where he is; he was there,—not while this peach machine was being built, but later, a good deal, he never saw them; but he has seen a set up orange machine. Is that what you want?
[95]

Q. I would like to know the names and addresses of some of these people who would know about the machines as they were made in those days?

A. This man that I am speaking of is named Jess Siffert, but I don't know his address now; the last time I knew him he was working for a firm at Riverside, and he is somewhere I suppose probably working for them yet, as far as I know.

Q. What firm was that?

A. I can't think of their name right now; they are manufacturing orange house machinery, however—Parker, I believe it is—I think that is the name.

Q. But you cannot give the address very definitely?

A. I cannot give his address, no, because I don't know where he resides; he may be at Riverside or he may not; I don't know about that; but I met him not a great while ago; that is the reason I think he is in the state somewhere.

Q. It is not quite clear what company you refer to as his employer.

A. I think the company, or at least the manager of it, is Parker; I don't know whether they call it the Parker Company, or not.

The COURT.—There is a Parker Company?

(Testimony of H. G. Baker.)

Mr. LYON.—There is a Parker Machine Works, George D. Parker.

The COURT.—Parker Machine Works, is it? They manufacture—

A. (Intg.) Orange house machinery.

Q. They manufacture fruit box machinery?

A. I presume they do.

Mr. LYON.—That is that nailing-machine, the same company.

The COURT.—Mr. Miller ought to know where that is.

Mr. CHAPPELL.—Considering the names of the joint patentees of the patent, do you know the present address of Mr. Vernon A. Chalker?

A. He is at Long Beach, California.

Q. And of Lindsay O. Ferguson?

A. Glendora, California.

Q. And James M. Baker?

A. Glendora, California. [96]

The COURT.—Q. You still live in Glendora?

A. Yes.

Mr. CHAPPELL.—Q. Did any of these people have anything to do with the preparation of the machine for peeling peaches?

A. No, none of them.

Mr. CHAPPELL.—I think that is all.

Mr. LYON.—That is all. I will ask counsel for the plaintiff if there is any reason for retaining Mr. Baker in attendance? If not, I would like to have him excused, so that he can return to Glendora; his business requires him; he has been up here about 10

(Testimony of H. G. Baker.)

days awaiting this trial. We probably shall not need him again. If plaintiff does not care whether he remains, we will excuse him.

Mr. CHAPPELL.—Your Honor, I cannot tell what the defendant is going to do, but as far as we can now judge, we see no reason why he should not be excused.

The COURT.—Let him be excused, then.

Testimony of R. B. Way, for Defendant.

R. B. WAY, called for the defendant, sworn.

Mr. LYON.—Q. Your name? A. R. B. Way.

Q. Where do you reside, Mr. Way?

A. Whittier, California.

Q. In what business are you now engaged?

A. I am a peace officer of Los Angeles County, at the present time.

The COURT.—Q. Where do you reside, Mr. Way?

A. At Whittier.

Mr. LYON.—Q. How long have you resided in Whittier, California? A. 24 years.

Q. Did you ever have anything to do with the fruit industry in any manner? A. I have.

Q. In what connection?

A. The deciduous branch; I worked in [97] the Whittier Cannery from 1904 to 1909, inclusive.

Q. Did you ever work anywhere else than in Whittier in the deciduous fruits?

A. Other than Whittier?

Q. Yes.

A. I worked in Fresno in the year 1902.

(Testimony of R. B. Way.)

Q. In what connection?

A. My connection with the canneries was the superintendent or overseer of the peeling or preparation department.

Q. For what company or association?

A. It was the Whittier Cannery at Whittier, and the California Fruit Canners Association at Fresno.

Q. Who was in charge of that cannery at Fresno in 1902, while you were there? A. C. J. Vernon.

Q. How long had you known C. J. Vernon at that time?

A. I became personally acquainted with him in the year 1890.

Q. Under what circumstances did you come to go to Fresno in 1902?

A. Mr. Vernon was removed from the Los Angeles cannery, and he requested that I take my old position in the Fresno cannery that year with him.

Q. How long did you remain with the Fresno cannery in 1902?

A. Just the one season, through the peach pack.

Q. Do you know whether Mr. C. J. Vernon is alive at the present time? A. He is not.

Q. Do you know when he died? A. I do.

Q. When? A. On the 20th of December, 1902.

Q. How are you able to fix this date?

A. By different records and memorandum that we have at home.

Q. What does this memorandum consist of?

A. One of them are clippings from our local

(Testimony of R. B. Way.)

newspaper, and I have some clippings clipped from different papers in our family scrap-book, and I also have—[98]

The COURT.—Is there any question about the date of the death of Vernon?

Mr. CHAPPELL.—I think not, your Honor.

Mr. LYON.—That he died in December, 1902?

Mr. CHAPPELL.—I think that is all right.

The COURT.—Do not take up time in matters of detail of that kind about which there is no question. I understood you to say that he was killed in a railroad accident. Those things usually are matters of such public notoriety—

Mr. LYON.—Counsel did not concede that statement.

Q. Mr. Way, when you went to Fresno in 1902, you were there prior to the peach canning season?

A. The earlier peaches were just ripening when I got there.

Q. What, if any thing, did the Association use in 1902 for the purpose of preparing the peaches for canning.

A. We used the caustic soda.

The COURT.—Soda bath?

A. A soda bath, yes, and the brushes and the vats.

Mr. LYON.—Please explain fully and in detail the arrangement of these devices, and how they operated.

A. Clean through the building?

Q. Yes.

A. Toward the west end of the building we had a moving belt probably about 50 feet long, probably about 1 foot wide; the peaches were cut in halves

(Testimony of R. B. Way.)

and pitted and placed on that conveying-belt, which dumped them into the caustic solution; out of that they went into a tank of water and from that tank they went into another tank of clear water, as near as we could make it, and then they went from that into what we call the peeler, and from that they went into a tank of water, and from there they were conveyed on to traveling belts and taken from that belt [99] in quantities to suit each canner.

Q. You have referred to a peeler; what do you mean by that? How was it constructed?

A. There were two circular brushes placed on a frame and a traveling belt or conveyor between those two brushes, and immediately over that brush was a pipe which was perforated and connected to the water main.

Q. You say this pipe was perforated. Please explain how or in what manner it was perforated.

A. When we first set up the machine, that pipe consisted of a tin or galvanized iron, I am not positive which, and it was perforated on the under side, and that made the spray of water which washed the peeling from the peach as the peach passed through between the brushes.

The COURT.—How was it perforated, he asked you?

Mr. LYON.—Describe the perforations.

A. They are just small holes through the under side of this pipe that passed through between the brushes.

(Testimony of R. B. Way.)

The COURT.—Was it put in irregularly, or in any order?

A. I am not quite certain whether they were regular, or not.

Mr. LYON.—How long was that pipe used in that machine?

A. I could not tell you the exact time.

Q. What became of it, what was done?

A. That pipe, if I remember correctly, was ruined by experimenting with the sprays, and there was afterwards a new one put on, I am not quite certain but what we used a third one before the season was out.

Q. You mean a third pipe?

A. A third pipe, that is, removed the old one and used the third pipe before the season was out.

Q. Was the second one a solid pipe, or perforated one? A. Perforated.

Q. Do you remember how that was perforated?

A. Practically the same as the first one. [100]

The COURT.—Q. Describe, so that I will know about it, how that pipe was perforated; talk about the first one.

A. Well, say this is the bottom of the pipe, and there were holes perforated like this, and down in the center, we will say, the perforations covered one-quarter or one-sixth of the circumference of the pipe.

Q. How large a pipe was it?

A. The tin pipe, in my opinion, was about an inch and a quarter, maybe an inch and a half.

(Testimony of R. B. Way.)

Q. In diameter? A. Yes.

Mr. LYON.—Q. How large was the second pipe that you put on there?

A. The second pipe was larger than the first.

Q. About how much larger?

A. I think perhaps half an inch.

The COURT.—The second pipe, then, would be about two inches in diameter?

A. 1½ to 2 inches; I am not quite positive on that.

Mr. LYON.—Q. And the third pipe, was that also perforated?

A. That was a perforated pipe, but I think that was cast iron.

Q. Perforated in this same general manner that you have referred to?

A. The same general manner.

The COURT.—Q. How long did they use the machine before the pipe had to be changed?

A. Not very long. Do you want me to state why?

Q. Just about the length of time; not very long don't mean much; it might be a year.

A. It was not, only measured by days; probably that first pipe was not on there over a week or so.

Q. What was the matter with it?

A. We endeavored to get more water.

Q. Let more water through?

A. Let more water through, and we found out that our intake was not large enough, and that necessitated a new line to the main, and that was the cause, I think, [101] of the first change.

(Testimony of R. B. Way.)

Q. I thought you said that the perforations were destroyed?

A. Well, they were made larger, and then the intake of the water or the main leading to this pipe did not supply the pipe and give the spray—

Q. (Intg.) Give the necessary pressure?

A. Give the necessary pressure.

Q. How did they come to put in a larger pipe?

A. Well, the larger pipe was put in there at the same time that the new lead was put in, to correspond with more water.

Mr. LYON.—You say a new lead was put in. What do you mean by that exactly?

A. The supply pipe to furnish the spray.

Q. What means, if any, did you have there for supplying the pressure after that to this machine?

A. We changed it in, say, probably two or three weeks after we started, and when we put this iron in, we connected a pump to the main.

Q. What was the purpose of that pump?

A. For pressure, an even amount of water.

The COURT.—Q. Was this apparatus all installed when you went there?

A. Only it was rearranged, but the line remained about the same, but the pitting-tables were put in after I went there; they had started to peel whole peaches, and we found after they were peeled we had what we call a cleaning knife to split the peach and the pit, and we found that the running of the whole peach was impracticable, because we could not handle the peach and pit it; so we started to pit

(Testimony of R. B. Way.)

the peach and run the halves through, and that necessitated some change in the line, and that made considerable change for the belts for the pitted peach.

Q. In what respect?

A. Where our pitting-belt was finally located, when this line was built, there was a grader or sizer [102] in that place, and we tore that out and made arrangements for the belt for the pitted fruit.

Mr. LYON.—Q. Now, proceeding with the history of this machine, you say you first tried using it with whole peaches? A. Yes.

Q. Afterwards pitted the peach, split it in two first? A. Yes.

Q. Did you ever meet a man by the name of H. G. Baker? A. Yes.

Q. Do you know whether he was at any time up there at this Fresno cannery in 1902? A. Yes.

Q. For what purpose?

A. He came there about the time that we were making these changes, and I think he was brought up for the purpose of recommending or increasing the capacity of this machine.

Q. Do you know what he did in that regard, if anything?

A. One of the material changes, and I do not recall but what that was the only one, he raised the conveying-belt through between the brushes up to probably even with the center, or maybe a little above; if I remember, that was the only change that was made.

(Testimony of R. B. Way.)

Q. The center of what?

A. The center of the two circular brushes.

Q. What effect did that have upon this washing or brushing-machine?

A. We could run more fruit over it.

Q. To what extent, Mr. Way, was this machine and apparatus which you have described used in 1902 at this cannery in Fresno?

A. What portion of the amount of fruit did we run over this?

Q. Yes.

A. I have no record of the amount; it would be only guessing.

The COURT.—Q. Mr. Way, was it the exclusive process for preparing peaches used there that year?

A. We peeled by hand one grade of peach; we had a very large order that year [103] of an exclusive brand, and we peeled all of those, what we call Fancies, by hand.

Q. They were not put through this process?

A. No, they were not put through.

Mr. LYON.—Q. For how long did you use this process and this washing or brushing machine in that cannery in the year 1902?

A. We got it to working very shortly after I got there. I think I left home the next day after the Fourth of July, and we had it to working pretty well by the time the Cling pack came in; and I think that was during the last of July, and we finished up the pack that year; it was running in good order when

(Testimony of R. B. Way.)

I left, that is, we finished, as I say, the pack that year.

Q. When did you leave?

A. I think I left the first half, probably, or middle of October.

Q. Now, you say you used this machine. Do you mean constantly or intermittently, or how?

A. We used it all the time, except right at the first, while we were experimenting with it.

Mr. LYON.—You may cross-examine.

Cross-examination.

Mr. CHAPPELL.—Q. What experience have you had in the peach canning business since that time at Fresno?

A. That is my last experience.

Q. How much experience had you before that?

A. I took charge of the same department in the Whittier Cannery in 1904—in 1904, 1905, 1906, 1907, 1908, 1909.

The COURT.—Q. That was subsequent to that time? A. That was his question.

Mr. CHAPPELL.—Q. What method of peeling peaches was used at Whittier?

A. Peeling by hand.

Q. You never practiced lye peeling after the season of 1902, then, did you? A. No. [104]

Q. What seemed to be the objection to it?

A. I never had anything to do with any canning after 1902.

The COURT.—I thought you said you were in the Whittier Cannery after that?

(Testimony of R. B. Way.)

A. From 1894; the Whittier Cannery was closed in 1900.

Q. You were in the Whittier Cannery after you went to Fresno this time?

A. 1902 was my last year in the canning business; I was in the Whittier Cannery from 1894 to 1899.

The COURT.—I had that wrong; I thought you went to the Whittier Cannery subsequently.

Mr. CHAPPELL.—I think he misstated it, because I understood him to say the same thing.

The COURT.—I think you conveyed that impression.

Mr. CHAPPELL.—Q. Had you had any experience in lye peeling of peaches before that season? No.

Q. Did you have any knowledge of it after that season of 1902? A. No.

Q. What part of the peaches were peeled by hand—Give us your best estimate—in the plant of the California Fruit Canners' Association at Fresno in 1902? Were there more peaches peeled by hand than by the lye process, or more by the lye process than by hand?

A. My opinion now would be that there was more peeled by lye; I am not positive on that.

Q. But the high grade fruit was all peeled by hand: Is that right? A. All peeled by hand.

Q. Was there any trouble from the discoloring of the fruit that was lye-peeled?

A. We made a special effort to not allow that lye-

(Testimony of R. B. Way.)

peeled fruit to stand exposed to the air without being in water.

The COURT.—He asked you if there was any trouble with [105] discoloration of the lye-peeled fruit?

A. We might have had a little trouble by not getting the fruit into the cookers just as quick as we should; we made a special effort, as I say, to get it right through.

Q. The lye-peeled fruit? A. Yes.

Mr. CHAPPELL.—Q. How many tanks did the lye-peeled fruit pass through after it left the brushes? A. One.

Q. That is, it was taken by a conveyor from one tank to a second tank, or simply dropped into the tank from the brushes—which was it?

A. It dropped into the tank from the brushes.

Q. Was there any water admitted and flowed through that tank?

A. We kept that tank supplied with water.

Q. But there was no constant flow through it?

A. I am not able to answer that; I do not just remember that part of it.

Q. How large was that tank?

A. Approximately, my judgment, I will say 5 by 14.

Q. How deep? A. 3 feet.

Q. How many bushels, or how many peaches measured in the way you may measure, either by bushels or otherwise, were ever put through the machine in a single day, that you know of?

(Testimony of R. B. Way.)

A. I could not tell you; I could not answer.

The COURT.—Q. Let me see, Mr. Way: The peaches were put in the disintegrating tank, that is, the lye bath; were they then taken into another bath of water before going on to the—

A. (Intg.) They were taken into two baths before they went into the machine.

Q. Two baths after the lye saturation?

A. Yes.

Q. Then they went into this peeler? A. Yes.

Q. And they were dropped into another tank of water? A. Yes.

Q. Then how were they conducted from that to the cookers? [106]

A. To the canners, you mean.

Q. To the canners; how were they conducted?

A. By an endless belt, about a foot wide.

Q. That ran into this third tank, did it?

A. No.

Q. How were they taken out of this 5 by 14 foot tank that you spoke of; how were they taken out of that and conveyed on—

A. (Intg.) On an apron extending down in the water, with slats across this way, and they would move up and would be carried on out and dumped.

Q. That was a traveling chain?

A. Yes, a traveling chain; the traveling belt carried them to the canners.

Mr. CHAPPELL.—Q. What was done to the peaches in the tanks after the lye scalding, and before they were passed to the brushing-machine?

(Testimony of R. B. Way.)

A. Our arrangement was this, that that first tank would naturally take a good deal of the lye or the soda, and we passed them through that and then into fresh water to remove the effects of the soda just as near as possible.

The COURT.—How were they transported from one tank to the other?

A. These traveling aprons.

Q. They ran right through the whole system?

A. Yes, they ran through the whole system.

Mr. CHAPPELL.—Q. Was any pains taken to agitate the peaches in the tanks between the lye scalding and the brushing-machine?

A. I think not, no special pains.

Q. How many attendants were required for the machine from the time the peaches went into the lye scalding device until they were delivered from the last tank to the canners?

A. My impression is there was one man at the scalding and one other along the line.

Q. What were the duties of the man at the scalding? What did he [107] Have to do?

A. He kept his solution to the right strength, and he regulated the amount of water which passed into the machine, and not to let them go in in a bunch; it took one man there all the time.

Q. You were the only man in charge of this work at that place at that time?

A. I had the whole floor personally, the handling—my work was putting the peaches in the cooking tank.

(Testimony of R. B. Way.)

Q. Did you send for Mr. Baker to help you out of your troubles?

A. I did not send for him; Mr. Vernon did.

Q. What was your relation to Mr. Vernon?

A. It is very distant; my stepfather was an uncle of Mr. Vernon.

Q. I meant your business relation at the Fresno plant.

A. I was working under Mr. Vernon.

Q. You were working according to his directions?

A. Yes.

Q. Did you discuss the matter with Mr. Vernon and Mr. Baker while he was there?

A. I don't recall the conversation, or anything of that kind, but I presume that I did.

Q. Was it any part of your duties to advise about the details of the machine, or simply to operate it?

A. Well, Mr. Vernon consulted me and I him a great many times in regard to the machine; I was interested.

The COURT.—Q. How did Mr. Vernon come to have you take charge of a process that you had never had any familiarity with?

A. At that time nobody had; that was my understanding; none of us knew anything about it when it was installed there.

Q. It was an experiment?

A. It was an experiment, yes.

Mr. CHAPPELL.—Q. To what extent did the brushes act on the peach or peaches as they passed

(Testimony of R. B. Way.)

through the machine; were you able to see any brush marks of any kind?

A. Not after we raised the conveyors up; I don't remember that we ever saw any brush marks [108] on them.

Q. The machine did not seem to be harsh on the peaches: Is that right? A. It did not.

Q. Was not the size of the peach somewhat reduced by the action of the brushes?

A. I do not think so, to amount to anything.

Q. It was some, however, was it not?

A. Well, probably the thickness of the peeling, unless the peaches were very, very ripe, it might have had some action on them.

Q. Did you notice peaches at any time that had some peeling left on them? A. Yes.

Q. What did you do about that?

A. The first part of the season, while everything was new, we very often got fruit through that showed that it had not been—the bath had not been strong enough, and they were carried back and put through again.

Q. You had inspections for that purpose?

A. We had one, and sometimes maybe two or three girls right on that belt where they were dumped out of the last tank, to take off anything that was not peeled properly; I don't know whether we continued that, but I remember of having that, and I remember also of carrying the peaches back in pails.

Q. There was a good deal of the time they had to

(Testimony of R. B. Way.)

remove some of the slime from the pit cavity, did they not?

A. There was one time during the season, but I do not just remember the circumstances we did some of that work, but I don't remember.

The COURT.—Q. Did some of what work?

A. My impression is that the pit, the side that the pit pulled out of, there would be some coloring in there, something red, and the girl would just take her thumb like that and take it out; I am not exactly certain on that line.

Mr. CHAPPELL.—Q. What would they do under such circumstances as [109] that; how was it cared for?

The COURT.—He said they would scoop it out with their thumb. Was it not washed after that? After this slime was taken out of the depression left by the pit, was it not washed?

A. I could not tell you; it runs in my mind that that was taken off in pails; now, I am not quite certain on that; it has been quite a long while ago.

Mr. CHAPPELL.—Q. Do you know what the water pressure was that was delivered to the spray pipe? A. I could not recall, no.

Q. How did the diameter of the spray-pipe compare with the pipe that led to it at the different times to which you have referred?

A. My impression is that we removed a three-quarter or an inch line and put a two-inch line in; now, I am not quite certain as to the size of that.

Q. How far was it from the main?

(Testimony of R. B. Way.)

A. I could not tell you that, either.

The COURT.—Q. What was the source of supply, did he state?

Mr. MILLER.—He has not stated yet.

A. The city main.

Mr. CHAPPELL.—Was there an intermediate tank, or don't you know? A. I don't know.

Q. When was the pump put into the line that you referred to?

A. My opinion now is that it was put in about the first of August, or directly after—just about the time the bulk of the peaches began to come in.

Q. Was the pump taken out at the time you left there?

A. No, not to my knowledge it was not; I don't know.

Q. Do you remember how big a pump it was?

A. I don't remember.

Q. Do you know who put the pump in? A. No.

Q. Are you sure that the pump was put into the line that led to [110] the spray-pipe?

A. Yes.

Q. What makes you sure of that?

A. Because that was our main trouble with the water.

Q. That is, you could not get enough water?

A. We could not get enough water, yes.

Q. Did you increase the size of the openings in the pipe in order to get more water?

A. I think I did that in the beginning of the season, but after I got it to working, as I say, this iron

(Testimony of R. B. Way.)

pipe was put in, I don't think we ever changed that, not to my knowledge.

Q. That is, you made the holes larger in the first place? A. Yes.

Q. How large were the holes, finally?

A. Now, I could not tell you.

The COURT.—Q. Who furnished you with this substitute pipe, do you recall?

A. The iron pipe?

Q. You call it a cast-iron pipe; would it be likely to be cast-iron pipe, a pipe so small as that?

A. Rolled iron, wrought iron.

Q. Wrought iron? A. Probably so.

Q. Now, did the H. K. Miller Co. furnish that pipe, or did you get it from Fresno?

A. No, they did not furnish the pipe; I think the iron pipe was fixed right there in the cannery.

Q. They had furnished the apparatus, hadn't they? A. They had furnished the tin pipe.

Mr. CHAPPELL.—Q. How much larger was the last pipe than the first one, that is, the pipe that had the spray holes?

A. I am not certain upon those facts; I am not certain as to the size of the pipe.

Q. On the iron pipe, the holes must be drilled in it, were they not? A. Yes, they must have been.

[111]

Q. Do you know how large they were?

A. No, I could not tell you how large they were.

Q. Do you know how many there were?

A. I could not tell you.

(Testimony of R. B. Way.)

Q. Do you know how far apart they were?

A. No.

Q. You don't know what became of that pipe finally? A. I could not tell you.

Q. Do you have any information as to how long that machine was continued after you went away?

A. I do not; I went into other work just as soon as I got home, and that is the last work I ever did in the cannery, and I know nothing about what became of it.

Q. You never were back to the plant to see what was doing afterwards? A. No, I never was.

Q. What business did you take up after you left Fresno?

A. I went to the Fay Fruit Company, citrus fruit.

Mr. CHAPPELL.—That is all.

Redirect Examination.

Mr. LYON.—Q. One question, Mr. Way: These fruit washers, had you seen them before in the orange industry? A. Yes.

Q. With the sprays on?

A. Yes, I have seen them both with and without.

Recross-examination.

Mr. CHAPPELL.—Q. What experience did you have with them as fruit washers?

A. I never had very much except I ran one one year with the dry brush, and after leaving the cannery we had another style of brush that I worked in my pack at Covina and Pomona and we had other makes of washers.

(Testimony of R. B. Way.)

Q. You did not have one of this same style of washer, did you? A. No.

Q. You had a different kind?

A. Yes. [112]

Q. Did you ever use one of these kind of washers before you went to Fresno?

A. I never used the washer with the spray on; I never used it myself, but I have seen it; but I have used the dry.

Q. How had the dry ones done their work?

A. They did it very nicely when there was nothing on the fruit except dust; they polished the fruit very nicely, but they would not take off the black scale.

Q. They acted on the entire fruit, did they, these brushes that were run dry?

A. When we were working oranges?

Q. Yes. A. Yes.

Q. But when they were working, the same brushes were working peaches, you did not have them act on the entire peach?

A. The conveyer was set differently when we were working oranges.

Q. In what way different? A. Lower.

Q. When they were using water on the oranges, did they set the conveyer lower or higher?

A. I am not quite sure about that; I just saw one in use; in fact, I think I have seen two; I think I saw one at Lamarada and one at Fullerton.

Q. Why would they set it different for oranges than for peaches?

(Testimony of R. B. Way.)

A. With whole peaches, I think it would work all right, just the same as for oranges, but with the halved peaches, we figured that it did not need any brush; we didn't know what we were after with the halved peaches, after we got it to working.

Q. The brush brushed the entire surface of the whole peach, did it, when you ran the whole peaches through? A. Yes.

Q. The brush did not reach the entire surface of the halved peaches? A. I don't think it always did.

Q. Was there any means for turning the halved peaches over so that they would be straight around and operated on all sides? [113]

A. The brushes were the means of throwing them over, acted as the means.

Q. Why would the brushes throw them over?

A. The action of the brush in touching the halved peach, would roll it over.

Q. You don't know where that machine is now?

A. I do not.

Mr. CHAPPELL.—That is all.

Mr. LYON.—That is all.

The COURT.—We will stand adjourned now until to-morrow at ten A. M.

(An adjournment was here taken until to-morrow, Wednesday, March 29, 1915, at ten A. M.)

[Endorsed]: Filed Oct. 10, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [114]

*In the District Court of the United States for the
Northern District of California, Second Division.*

Before HON. W. C. VAN FLEET, Judge.

IN EQUITY—No. 201.

DUNKLEY COMPANY,

Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES,

Defendant.

Proceedings Had Wednesday, March 29, 1916.

Wednesday, March 29, 1916.

Counsel Appearing:

For the plaintiff: FREDERICK L. CHAPPELL,
Esq., JOHN H. MILLER, Esq.

For the Defendant: FREDERICK S. LYON,
Esq., WILLIAM K. WHITE, Esq., KEMPER
B. CAMPBELL, Esq.

Testimony of J. B. Cobbey, for Defendants.

J. B. Cobbey, called for the defendant, sworn.

Mr. LYON.—Q. Mr. Cobbey, where do you reside?

A. Fresno, California.

Q. How long have you lived there?

A. About 29 years.

Q. What is your present occupation?

A. Carpentering.

Q. Did you ever at any time work for the California Fruit Cannery Association?

A. Yes, I have.

Q. Where?

(Testimony of J. B. Cobbey.)

A. At their plant at Fresno.

Q. When did you work for that Association at that plant?

A. When I first went there, do you mean?

The COURT.—Q. When did you first work for them? [115]

A. Well, it was in 1898—'97 or '98, as near as I can remember.

Mr. LYON.—Q. For how long approximately did you work for them?

A. I was there nigh on to eight years, between 7 and 8 years, to the best of my recollection.

Q. What did you do in that plant or cannery?

A. Well, I was what they called handy-man or repair-man.

Q. Just explain a little more in detail what you mean by that?

A. Well, broken machinery or anything that broke, I was supposed to fix it and put it in running order.

Q. Do you remember a man by the name of C. J. Vermont? A. Yes.

Q. Was he at any time connected with that plant?

A. Yes, he was a superintendent.

Q. Do you remember when?

A. Well, I think he came there in 1901, my first acquaintance with him.

Q. How long was he there?

A. Well, he was there near two years.

Q. Did you at any time observe how they peeled peaches in that plant while Mr. Vernon was there?

A. Yes, I did.

(Testimony of J. B. Cobbey.)

Q. What occasion did you have to know how they peeled peaches under Mr. Vernon in that plant?

A. Well, I was there and helped construct these machines myself.

Q. What part of the constructing of that machinery did you do?

A. I helped make the tanks.

Q. Explain to us what those tanks were and with what machinery they were connected?

A. They were connected with what we used to call the Grasshopper at first, and elevators you know; you want me to give a description of the way the fruit was dumped into the Grasshopper?

Q. Yes.

A. It was heated by some kind of a steam apparatus, kept to a boiling point or hot enough to scald and [116] from there it was elevated by an auger that revolved, that carried the peaches on up and dumped them into a tank of water and conveyed from there by a chain elevator into another tank.

The COURT.—Q. Screw elevator, I suppose he means.

A. Yes, a screw elevator.

Mr. LYON.—Q. In that Grasshopper there was a screw elevator?

A. In the Grasshopper, yes.

Q. The other elevator from this water-tank, what kind of an elevator was that?

A. That was iron run on sprocket-wheels.

Q. Just proceed.

A. After passing through the second tank it went

(Testimony of J. B. Cobbey.)

to the washer or peeler, as you might call it, conveyed there by a belt that run through between two brushes, as near as I can remember; there was a pipe connected, a perforated pipe that water dropped directly down on the peaches and also sprayed to the sides, diagonally to the sides, and particularly down on the fruit; from there it went on to the—if I remember right, it was in another tank of water and on to the people that did the canning, as near as I can remember.

Now, have you any personal knowledge as to the supply of water, or the manner of supplying water to this pipe on this washing or peeling machine?

A. Well, it was attached to the city water there, and we got our water from the city supply there, and we also I think in 1902, put in a pump there, also attached that to the city water.

Q. What was the purpose of such pump?

A. In the afternoon we did not get force enough from the water, we did not get the force we wanted, and we put this pump in.

Q. Force enough for what?

A. To wash these peaches.

Mr. LYON.—You may inquire, Mr. Chappell.
[117]

Cross-examination.

Mr. CHAPPELL.—Q. During what years were you employed at the California Fruit Cannery's Association plant at Fresno?

A. You mean when I first went there?

Q. All the time that you were there?

(Testimony of J. B. Cobbey.)

A. I went to work there before the plant went into the hands of the association; I was there when it was known as the Tenny Cannery. I worked there and was working there when it passed into the hands of the Association; I don't remember just what year that was.

Q. Do you remember what years you were at work at that plant all told?

A. Well, I remember working in '91 and '92—no, 1901-2 and 3.

Q. Did you work there after 1903?

A. Yes, I was there after that; I was there off and on for nearly eight years.

Q. You were there during 1904?

A. Yes, I was there in 1904.

Q. You were there in 1905?

A. Well, I can't remember now just whether I was there in 1905 or not; I could not recall.

The COURT.—Q. I thought you said you were working there for about eight years from 1898?

A. Well, off and on about eight years; there was one year that I was out a little while; they sent me up to another place.

Mr. CHAPPELL.—Q. Did they keep you busy there the year round, or just during the canning season?

A. I was practically there all the time; I was watchman there Sundays, and I was a trusted man and was there practically all the time when I was there, of course.

Q. Who was superintendent after Mr. Vernon?

A. I think his name was Monte, an Italian.

(Testimony of J. B. Cobbey.)

Q. Were you there when Monte was there? [118]

A. Yes, I was there when Monte was there.

Q. Who was superintendent after Monte?

A. I can't just remember his name, who did take his place.

Q. Were you there for some time after Monte was there?

A. Yes, when Hern was there; I was there one year when Mr. Hern was there.

Q. Do you remember what year that was?

A. That was 1906.

Q. Who was there the year before Hern was there?

A. I can't seem to recall his name.

Q. Do you remember when Mr. Mark Fontana was superintendent? A. Yes.

Q. What year was that?

A. He was there just before Hern was there; I worked under him.

Q. Who was there just after Monte?

A. I think that was Fontana, Mark Fontana, if I remember right.

Q. Did you have anything to do with the machines while Mr. Fontana was there?

A. Well, in case anything should break I was generally called upon to make the repairs.

Q. What became of the Vernon machine, or the machine that you worked on when Vernon was there?

A. We still retained it there. While I was there it was still there.

Q. Precisely the same machine?

A. Well, it might have been changed in little de-

(Testimony of J. B. Cobbey.)

tails; I don't remember now; as near as I can remember it was about the same machine.

Q. What changes if any did you make in the spray-pipe?

A. I did not make any changes in it.

Q. The matter of doing any plumbing work was not in your line: is that right?

A. No, I did not do the plumbing work; sometimes I took hold and helped the boys cut threads or something of that kind when I was not occupied otherwise.

Q. You did not have to do the making of the pipe and making [119] the holes in it or anything of that kind?

A. I did not have anything to do with the pipe; I saw the boys who did make it though.

Q. Did you see them make it? A. Yes.

Q. Who did that?

A. Well, a man by the name of Combs.

Q. When did you see him work?

A. Do you mean what year?

Q. Yes.

A. That was 1902 he was there.

Q. Was he making the holes larger in the pipe or was he making a new pipe?

A. He was making a new pipe, as near as I can remember.

Q. What kind of a pipe was he at work at?

A. It was a gas-pipe, I guess you would call it, or water pipe, about $\frac{3}{4}$ inch pipe, as near as I can remember.

(Testimony of J. B. Cobbey.)

Q. Did you see any sheet metal pipe or galvanized sheet metal pipe in use on the machine at any time?

A. They did have a kind of galvanized pipe there to start in with; it was not satisfactory and it was changed.

Q. What seemed to be the matter with it as far as you saw?

A. It seemed to wear out, the holes got too large or something of that kind, and it was not satisfactory; it did not give the force or something; I could not tell you exactly.

Q. Somebody cut the holes too large?

A. Not that I know of.

Q. How big was the galvanized sheet-iron pipe?

A. I don't remember; it was not very large; probably 1½ inch; I don't think it was over 2 inches, 1½ inch or 2 inch.

Q. To what extent was it perforated?

A. If I remember right there were three lines of perforations, one directly down and one on each side, making three.

Q. Do you remember how large the holes were.

A. No, I do not exactly; they seemed to get larger here than they needed—they were larger than they wanted. [120]

The COURT.—Q. You say that was about an inch and a half?

A. An inch and a half, or 2 inches, as near as I can remember.

Q. The one that succeeded that was a smaller pipe then? A. I think so.

(Testimony of J. B. Cobbey.)

Q. They did not put in a larger pipe?

A. No, not that I remember of.

Mr. CHAPPELL.—Q. Were these holes drilled in this sheet-iron pipe or galvanized pipe or were they punched in?

A. I don't remember about that.

Q. You did not have occasion to examine that very closely? A. No, not particularly.

Q. How many brushes were made use of in this brushing machine?

A. As near as I can remember there was two, two brushes.

Q. Are you sure there were not two belts with three or four brushes?

A. I did not see anything of that kind, and I remember of; there were just the two brushes.

Q. How many of the delivery belts were there?

A. What do you mean?

Q. Belts between the brushes.

A. There was one.

Q. How long were those brushes?

A. Well, they must have been 4 or 5 feet, something like that, in length.

Q. Please describe those brushes as well as you are able to do and how they worked.

A. Well, they ran along by the belt in the same way the belt did; one of them practically turned one way and the other the other, and by so doing they would turn the peaches over, kept continually wet from this spray.

Q. How many peaches would be in that machine at a time? A. How many?

(Testimony of J. B. Cobbey.)

Q. Yes.

A. I do not believe I ever counted them; I can't remember. [121]

The COURT.—Q. Did they travel along in a single row or several rows?

A. Practically in a single row.

Q. They never got in any bigger than a single row?

A. I don't think they did; of course, that was not my work down there, to look after that machine, but if anything happened to it and I was called upon, I went down and fixed it.

Mr. CHAPPELL.—Q. Did you have anything to do with connecting the pump that you referred to?

A. Yes. I was one of the parties that put the pump down there myself.

Q. How large a pipe was there to connect the pump to? A. I think that was a 2 inch.

Q. Where did that lead from, and to what did it connect?

A. It led from the city water, where we got our water, and helped the spraying—got more force by this pump.

The COURT.—Q. Was the pump connected to the city water, you say?

A. Yes; we drew our water from the city.

Mr. CHAPPELL.—Q. Was there a supply pipe between the city main and the pump?

A. Yes, we had a supply tank.

Q. How much of a tank was that?

A. I would think that it was a tank, I should say, holding 300 or 400 gallons, if I remember right, a wooden tank.

(Testimony of J. B. Cobbey.)

Q. Then, the city main delivered into this supply tank? A. Yes.

Q. And then the pump pumped from the tank; is that right?

A. Yes, but we got our water you know from the city; we got our water from the city.

Q. And this pump delivered only to the spray pipes and did not deliver to the engine; is that right?

A. I don't think it did; I do not think it ran to the engine. [122]

Q. Did you put in the pipes that connected either way on that pump?

A. No, I do not think so.

Q. And all you would know about it, was what you observed; is that it? A. Yes.

The COURT.—Q. You said you helped install it?

A. I helped put the blocks down there and bolt them down to the concrete and helped fasten them down; the other man done the pipe work.

Mr. CHAPPELL.—Q. Do you remember any change being made in that pipe after that?

A. I can't call it to mind now.

Q. You don't remember whether there was a 4-inch pipe put in afterwards?

A. No, I don't remember that.

Q. You did not have to do with any other connection after that?

A. No, not that I remember of, no; that pipe work, I did not have much to do with that.

Q. Did you have anything to do with the pipe work while Mr. Monte was superintendent?

A. I don't remember as I did.

(Testimony of J. B. Cobbey.)

Q. Did you notice any changes in the pipe work while you were superintendent?

A. They put in another line there of pipes one day.

Q. Where did that line of pipes lead to?

A. I could not say positively.

Q. Had it anything to do with the spraying?

A. I don't remember about that, just how they did do that.

Q. How did it happen that the water pressure was less in the afternoon than in the morning?

A. Well, it was supposed it was on account of so many people using the water, it got very weak there every afternoon, and we did not get sufficient force for our machinery, of water, so we had to add, to get a supply tank.

Q. Do you know how large the service cock was that led into [123] the supply pipe of the California Fruit Cannery's Association from the water main?

A. I think that was a 4-inch, if I remember right.

The COURT.—The service cocks from where?

Mr. CHAPPELL.—From the water main into the supply?

The COURT.—4 inches?

A. I think it was a 4-inch, if I remember right.

Q. For a 300 or 400-gallon tank?

A. Well, for supplying the whole tank, you know.

Q. Let me see: do you mean a tank that would hold 300 or 400 gallons?

A. Well, it was a service tank.

Mr. CHAPPELL.—Q. The pump as you remember then was not connected directly to the city water

(Testimony of J. B. Cobbey.)

main but to this tank; is that right?

A. Well, I do not just remember about that; I think it was connected up to the tank, to the best of my recollection.

Q. You don't remember whether Mr. Monte put any sprays on the Vernon machine, or not, do you?

A. No, I don't remember.

Q. Do you think you would know about it, if he had? A. It appears to me I would.

Q. Considering the Vernon machine as you knew it in 1902, explain about all the water supply that led to that machine, so far as you knew it.

A. The water supply?

Q. Yes, that which supplied the tanks and anything else about the machine.

A. Well, we had water-pipes there and connected with the water-main and when we wanted water in the tanks we had an arrangement to loosen the cock and turn the water in, and also had it fixed with a continuous spray on these brushes and washing machine or peeling machine; it was all managed by cocks, stop-cocks or something of that kind. [124]

The COURT.—Q. Was this spraying apparatus the only instrumentality where water was used in the process of peeling peaches?

A. This spraying machine?

Q. Yes.

A. We had two or three tanks of water there they went through.

Q. Where were they?

A. They were on the line behind the Grasshopper.

(Testimony of J. B. Cobbey.)

Q. Can't you describe how they were situated and in what connection?

A. Well, as I stated, we got our peaches through this auger elevator or whatever you term it, out of the Grasshopper into our first tank and from there it was conveyed by an elevator to the next and so on to the carriers, and dumped on to this carrier belt that carried it between the brushes and so on into the other tank, the cooling tank.

Mr. CHAPPELL.—Q. What work did the brushes do so far as you observed in the matter of peeling peaches?

A. Well, they were supposed to brush the loose skins away and wash them away, with the addition of the water.

Q. Did you in the year 1902 while *Mr. Vernon* see any spray pipes over the carriers that carried the peaches from the tank into which the Grasshopper discharged?

A. Any spray down there?

Q. Yes. A. I don't call any to mind.

Q. There was nothing there that you remember of during the year 1902 when Mr. Vernon was superintendent; is that right?

A. Was there any sprays you say?

Q. Was there any spray over the carriers that led from the tanks into which the Grasshopper discharged?

A. I think there was. There was some kind of a spray there on one of them; I think there was.

Q. When do you think you first saw that spray?

(Testimony of J. B. Cobbey.)

A. As near as I can remember it was 1901 or 1902; we had a spray there of some kind; I can't remember particularly.

The COURT.—Q. Where was it,—where was it located?

A. It was right up behind the Grasshopper and up over the shaker we had there.

Mr. CHAPPELL.—Q. Please describe the shaker that you have referred to.

A. We had a box with a galvanized bottom—water running out and dropping out, a pipe perforated, and that was continuously shaking, and the spray was washing on down before it went down through the apertures.

Q. When did you see that for the first time?

A. I think it was 1901, I could not say positively.

Q. Who put that in?

A. It was Mr. Combs. He was there about the same time I was there.

The COURT.—Q. Where was that shaker situated with reference to the Grasshopper as you call it?

A. It was right behind, close behind it, somewhere back of it.

Q. Did the fruit come right out of the Grasshopper through this screw conveyor on to the shaker?

A. I think so.

Q. Before it went into a tank? A. Yes.

Q. There was a spray over that shaker?

A. Yes, we had water in a spray there.

(Testimony of J. B. Cobbey.)

Mr. CHAPPELL.—Q. Did you help install a Grasshopper?

A. Yes, I was there at the time; I helped carry it down there and start the thing.

Q. When was that?

A. That must have been in 1901, when they first started that thing, as near as I can remember.

Q. Was Mr. Vernon there at that time?

A. Yes, Mr. Vernon was there at that time.

Q. How many years was Mr. Vernon there as far as you remember? [126]

A. He was there part of two years, as near as I can remember.

Q. He was there in 1901 and 1902; is that right?

A. Yes.

Q. What time did you see him there in 1901?

A. In the spring.

Q. Was the Grasshopper put in after he came or before?

A. Well, we used to use it, it was setting around there; it had been there sometime, but we connected it up with this machinery that year.

The COURT.—Q. 1901?

A. 1901.

Q. Was this entire line of machinery that you have spoken of installed in 1901? A. Practically.

Q. How long had you been working there when this machinery was installed?

A. I had been there about 1888—I went there in 1888.

Q. Do you mean '88? A. '98.

(Testimony of J. B. Cobbey.)

Q. You had been there about 3 or 4 years?

A. 3 or 4 years, yes.

Mr. CHAPPELL.—Q. The Grasshopper was used also for scalding tomatoes, was it not?

A. Yes, we used to use it for that.

Q. When did you see it used for that first?

A. That was in—somewhere in 1899, I guess.

Q. It was this same Grasshopper that was installed to peel peaches, was it?

A. The same thing.

Q. Was this shaker that you refer to next to the Grasshopper and receiving the peaches from the Grasshopper or did it receive them from the tank?

A. I think it received them from the Grasshopper, if I remember right.

Q. Then after the peaches had been on this shaker and went into the tank, they went on from there to the brushing machine; is that right?

A. Yes, they went on, passed on through the tanks of [127] water and on to the brushes and washing-machine.

Q. At what place were the peels removed from the peaches, at the shaker or at the brushing-machine?

A. At both places, I guess.

The COURT.—Q. How is that?

A. They were removed at both places, some in one place and some another, washing them and brushing them together.

Mr. CHAPPELL.—Q. How long was the shaker?

A. The shaker was about, I guess, 6 feet long, as near as I can remember.

(Testimony of J. B. Cobbey.)

Q. And the shaker was in the Vernon machine, was is?

A. Yes, we had it there attached to it for awhile; I don't know whether it was a success; it might have been taken out afterwards.

Q. When the peaches passed through the brushing-machine were they separated so that the different peaches were out of contact with each other, or were they piled up on each other?

A. They were kind of separated and passed on to the carrier.

Q. Do you remember how fast the belt ran?

A. No, I do not; it run pretty fast though.

Q. Do you remember how fast the brushes revolved?

A. I could not say as to that; the brushes would run at a pretty good speed, though.

Q. Do you know how many bushels of peaches went through the machine in a day when it was running right along?

A. I don't remember about that.

Q. Did you see any peaches run through whole, whole peaches?

A. Yes, we run some through whole.

Q. When was that?

A. When we got hold of peaches which were not hardly up to standard, they peeled them whole without [128] splitting them and pitting them.

The COURT.—Q. To what extent was that done; right straight along through the season?

(Testimony of J. B. Cobbey.)

A. No; they did not do a great deal of that, just a little.

Q. I mean from time to time during the season, or all at one time?

A. From time to time during the season, when they got hold of some that were not up to standard they would can them with the pits.

Q. That occurred from time to time throughout the entire season? A. Once in awhile, yes.

Mr. CHAPPELL.—Q. About how wide was the delivering belt between the brushes?

A. I believe it was something like 8 inches or 10 inches.

Q. That is, the belt that was between the brushes?

A. It might have been over 6; I can't just remember; it has been a good many years ago.

Q. You say the brushes were on the side of the belt?

A. Yes; the belt ran a little below the center of the brushes.

The COURT.—You say that belt was about 6 or 8 inches wide?

A. I think so, as near as I can remember.

Q. Then more than one row of peaches would run on a belt of that width, wouldn't it?

A. It looks like it; it had guides.

Mr. CHAPPELL.—Q. How large were the brushes, how far apart?

A. In circumference?

Q. In diameter.

(Testimony of J. B. Cobbey.)

A. Well, I think they were 6 or 8 inches in diameter.

The COURT.—That is about 6 or 8 inches round, or through?

A. Yes.

Mr. CHAPPELL.—Q. How far were the brushes between centers?

A. Between centers? [129]

Q. Yes.

A. I don't remember about that; close enough to turn the peaches, to keep them rolling around.

The COURT.—Q. How were the brushes constructed?

A. Well, they were constructed with these fibre brushes.

Q. They were fibre?

A. If I remember right they were fibre.

Q. In what material was the fibre inserted?

A. We had wooden centers.

Q. It was not hair?

A. If I remember right they were fibre.

Mr. CHAPPELL.—Q. Now, as a matter of fact, were not spray pipes put on over the conveyors from the tank, when Mr. Monte was there?

A. I can't remember now; I know we had them there awhile; just when they were put on I don't know.

Q. You are not sure but what it might have been when Monte was there, is that right?

A. It might have been then.

(Testimony of J. B. Cobbey.)

The COURT.—You say spray pipes over the conveyors?

Mr. CHAPPELL.—Over the conveyors from the tanks.

Q. The machine was changed a good deal when Mr. Fontana arrived, was it not?

A. I don't remember about changing it very much.

Q. When Mr. Fontana arrived there was a 4-inch lead put to the water main, was there not?

A. I don't know but that there was.

Q. You think that might have occurred when he was there? A. Yes, it might have occurred.

Q. And Mr. Fontana might have put some more spray pipes above the machine, might he not?

A. I do not think so.

Q. Do you know whether he did or not?

A. No, I don't think he did; to the best of my recollection he did not.

Q. You think that the same spray pipes remained there after you arrived, do you?

A. I think so.

Q. You did not have to do with the changing of the spray pipes [130] anyway, did you?

A. No.

Q. Did you not put in the shaker when Mr. Fontana was there in the year 1905?

A. I don't remember about that; the other boys put the shaker in, if it was there.

Q. Are you sure that there was a shaker there before 1905?

A. I can't remember now; I think there was.

(Testimony of J. B. Cobbe.)

Q. You think there was a shaker there in 1905?

A. I think there was a shaker there in 1902.

Q. The question is, do you think there was one there in 1905 also?

A. They changed them around every once in awhile; I can't remember about those things.

Q. You don't remember for sure whether there was a shaker there in 1905 or not?

A. No, I do not; I don't remember whether there was one there in 1905, or not.

The COURT.—Q. How do you mean they changed these around; did they change the character of the machinery from time to time?

A. They changed the stroke; they changed the stroke of the shaker and one thing and another every once in awhile, the boys did.

Q. Did they change the processing machinery in a material way? A. No, nothing of that kind.

Q. Then was the shaker there all the time?

A. Practically.

Q. If not there all the time it would be quite a change, would it not? A. Well, yes.

Q. If they took it out?

A. I don't think they took it out; I think it was there.

Mr. CHAPPELL.—Q. When did they discontinue hand-peeling at the Fresno plant of the California Fruit Cannery Association if you know?

A. I don't remember the year; it must have been along in 1901. [131]

Q. Didn't they hand-peel in 1902 also?

(Testimony of J. B. Cobbey.)

A. Once in awhile they would get hold of extras they wanted to be very extra with, and they would peel a few, not very many.

The COURT.—Q. That was not kept up all the time? A. No.

Mr. CHAPPELL.—Q. Didn't they hand-peel also in 1904?

A. They might have, some.

Q. Didn't they peel rather more than one-half of the peaches by hand in 1902?

A. I do not think so; sometimes they would get a lot of extras they were very careful of, and they had a few nice peelers there, and they would let them peel by hand.

Q. That is, by extras you mean extra good quality, extra fine peaches? A. Yes.

The COURT.—Is that all with the witness?

Mr. CHAPPELL.—Q. Just a moment. Were you ever employed by Inderrieden & Company?

A. By Inderrieden & Company?

Q. Yes. A. I was.

Q. What year was that?

A. I cannot just remember the year; it was after the Fresno business though.

Q. Was not that in 1904?

A. I don't remember now.

Q. Were you employed there a whole year?

A. No.

Q. How long were you employed?

A. I worked there several months.

Q. What months of the year did you work there?

(Testimony of J. B. Cobbey.)

A. I could not remember now; in the fall.

Q. During the fall? A. The fall and winter.

Q. During the fall and winter? A. Yes.

Q. Do you think it was during the peach peeling?

A. I think it was after that.

Q. What did you do there?

A. At Inderrieden I was the same, I was the repair-man; I took my tools there and done their [132] carpentering and repairs.

The COURT.—Q. What were they running on at that season?

A. Inderrieden?

Q. Yes?

A. They were drying fruit and seeding raisins.

Mr. CHAPPELL.—I think that is all.

Mr. CHAPPELL.—Q. Where are you working now?

A. I am contracting and working in the carpenter business in Fresno.

Q. How long since you got out of the fruit-canning business?

A. It has been nigh on to 10 years since I worked in the fruit business.

Q. How long since you have thought of this processing of this fruit as you have described it, that went on while you were there; how long since you thought of it after you left there?

A. I guess about three years ago I got an intimation about this; I made an affidavit.

Q. Who did you make the affidavit for?

A. For the California Fruit Cannery Association,

(Testimony of J. B. Cobbey.)

in regard to my work there.

Q. Who did you talk with about your recollection of this machinery? A. Mr. Monett.

The COURT.—Is that all with the witness?

Mr. CHAPPELL.—That is all.

Mr. LYON.—That is all.

Testimony of S. R. Combs, for Defendant.

S. R. COMBS called for the defendant, sworn.

Mr. LYON.—Q. Where do you reside, Mr. Combs?

A. I reside in Fresno.

Q. How old are you?

A. I am 48 years old. [133]

Q. What is your occupation?

A. My trade is machinist and millwright.

Q. How long have you lived in Fresno?

A. For the past 28 years.

Q. Were you ever at any time employed by the California Fruit Canners' Association? A. I was.

Q. Where? A. At Fresno.

Q. In what capacity?

A. Well, in the early part of the year I repaired machinery and set machinery, and in the other part of the year I was employed and sent out to receive fruit, buy fruit and ship fruit to the different canneries.

Q. You were then connected with the California Fruit Canners' Association at Fresno? A. Yes.

Q. Did you ever know a man by the name of C. J. Vernon? A. Yes.

Q. Where did you know him?

(Testimony of S. R. Combs.)

A. I worked for him.

Q. Where? A. At Fresno.

Q. In what cannery?

A. The California Fruit Cannery.

Q. What did you do for him there?

A. I set up machinery, as I told you, the first part of the year and then went out and received fruit and shipped it to the cannery and to the other branches.

Q. Do you know anything of what kind of a process or machine was used in that cannery under Mr. Vernon for peeling or removing the peeling of peaches? A. Lye machine, with brushes.

Q. Will you please describe that as fully as you can now from memory?

A. The lye machine was I believe, they called it a Grasshopper, which they put caustic soda into and heated it with steam, and they dumped the fruit into the Grasshopper which was so called by [134] a screw just the same as one of the old original wheat screws in the elevators; it was carried up through the neck of the Grasshopper, dropped into a chute which went into a tank, in front of the Grasshopper, and it passed up an elevator and dropped into the second tank; it went up another elevator and into the brushes, under a water-spray; it went from there into another tank, and from there on to a conveyer-belt with canners standing on each side of it; that was where the best fruit was canned; after the fruit passed on to the end of the belt it took a side shoot on to another canning table, and that is where the

(Testimony of S. R. Combs.)

poorer class of the fruit was canned; that is the end of the machine.

Q. You have referred to this brusher and spraying? A. Yes.

Q. Can you describe that a little more fully?

A. Something similar to this model that sets before me, the brushing part.

Q. Now, the sprays, how were they arranged?

A. The first spray we had was made out of galvanized iron or tin, out of tin sprays, about I should say an inch and a quarter in diameter, right up from the brushes; I suppose it stood—well, I would not say whether it was 8 or 10 inches above the brushes—on the under side of the spray-pipe were three rows of perforations, one in the center and one was equally distant on each side to strike the two brushes.

Q. Where did the water come from?

A. It came from the city main at Fresno.

Q. Do you know what pressure you had at that time? A. I don't know the exact pressure.

Q. Did you have plenty of pressure there for that machine? [135]

Mr. MILLER.—We object to that as leading.

The COURT.—Yes.

Mr. LYON.—I am trying to avoid leading him.

Mr. MILLER.—That is strictly leading.

The COURT.—It is very decidedly leading; a question you can answer yes or no is leading.

Mr. LYON.—Q. What difficulty, if any, did you have with the water supply to that machine?

A. In the morning we had a tolerably fair supply

(Testimony of S. R. Combs.)

of water up to probably 2 or 3, maybe half-past 3 o'clock in the afternoon; then all the people of Fresno were watering their lawns which cut our supply of water down.

Q. Was there anything done to increase the supply of water? A. Yes.

Q. What was it? A. We put on a pump.

Q. For what purpose?

A. For increasing the force.

Q. Why did you want to increase the force?

A. To keep the brushes good and clean, and wash the lye and stuff off of the fruit.

Mr. LYON.—You may inquire, Mr. Chappell.

Cross-examination.

Mr. CHAPPELL.—Q. How many years were you in the employ of Mr. Vernon with the California Fruit Cannery's Association?

A. One year I should say, one full year.

Q. What year was that?

A. Well, it was 1902.

Q. When did Mr. Vernon come to Fresno as far as you know? A. In 1901.

Q. Was he in charge of the plant in 1901?

A. He was not; he was in charge of the green fruit on the outside.

Q. How do you know that?

A. Because I worked under him part [136] of the time.

Q. Did you help install machinery for Mr. Vernon? A. I did.

Q. What kind of machine did it displace?

(Testimony of S. R. Combs.)

A. Well, small canning tables; we did all our work by hand before, you know.

Q. All the work was done by hand before that time?

A. Yes, before Mr. Vernon came there.

Q. You put in the process machine?

A. What?

Q. You put in the process machine for Mr. Vernon? A. I helped install them.

Q. What year was that?

A. The spring of 1902.

Q. Did you work there in 1903? A. I did.

Q. Who was superintendent then?

A. I think it was Mr. Monte that came after—no—I don't know as I could just remember which one it was; there were so many of them.

Q. You don't remember for certain whether or not it was Mr. Monte?

A. No, I would not say that it was Mr. Monte.

Q. Did you work there when Mr. Fontana was superintendent? A. I did.

Q. What year was that?

A. That was after Mr. Monte.

The COURT.—Q. What year was this, he is asking you? You don't know when Mr. Monte worked there, you don't remember?

A. 1903 or 1904, it has been so long ago—I did not put these dates down, just what I know in my head.

Mr. CHAPPELL.—Q. What did you do about the

(Testimony of S. R. Combs.)

water-pipes while Mr. Fontana was there, if anything?

A. There was lots of repair work.

Q. Did you help put in a 4-inch lead from the water-main, at that time?

A. When Mr. Fontana was there?

Q. Yes. A. No. [137]

Q. When you did that, if you took any part in it?

A. I think that was in 1902.

Q. That would be under Mr. Vernon?

A. Yes, I think that was it.

Mr. CHAPPELL.—Q. Did you make any changes in the water-pipes when Mr. Monte was there?

A. I could not say that I did myself.

Q. Did you see any changes made?

A. There were all kinds of changes made there every year; there would not be a week but what there was some kind of a change made.

The COURT.—He is asking you about the water-pipes, did you see any changes in the water-pipes during that time?

A. I don't think I did.

Mr. CHAPPELL.—Q. Did you see Mr. Monte put on any spray pipes of any kind? A. No.

Q. Please explain about all the pipes that delivered the water on the fruit in conjunction with the Vernon machine in the year 1902.

A. Well, the way the machine set, the back end of the machine would be west toward the railroad, and the front end toward the east, toward the street or offices; and the pipes were under the floor, part of

(Testimony of S. R. Combs.)

them, and part of them were on top of the floor; the pipes ran up about a post and ran over and down with a spray over the brushes.

Q. Was there any spray at any other point than over the brushes?

A. Only what was sprayed on with the hose; we used to wash it out with hose; there were plenty of places to connect on.

The COURT.—Q. The only spray though was over the brushes? A. Yes. [138]

Q. When did you see any shakers in use at the Fresno plant for handling peaches?

A. I think I helped build some of the shakers myself.

The COURT.—Won't you answer the question? He asked you when you first saw any shakers there.

A. I think it was either in the fall of 1902 or the spring of 1903 that we put those in; I would not swear which one.

Mr. CHAPPELL.—Q. You put those in when you were there with Mr. Monte; is that right?

A. I think we done some repairing like that for Mr. Monte.

Q. At just what part of the machine was the shaker located?

A. On the brushes and spray—there were some sprays, I think, although I did not put them in, over the shaker.

Q. At what point of the machine were the shakers located?

A. After it passed through the brushes.

(Testimony of S. R. Combs.)

Q. The brushes were still there when the shakers were there, is that right?

A. I don't know whether they took the brushes out or not; I would not say to that; my memory isn't good enough for to remember all that; I do not think so.

The COURT.—Q. The shaker was not immediately next to the Grasshopper or the elevator—

A. —I think they took the brushes out after they put the shaker in.

Q. I say, the location of the shaker was not right next to the Grasshopper?

A. Right close to the Grasshopper, yes.

Q. I thought you said it was beyond the brushes?

A. Well, we had brushes in, but I think they took the brushes out.

Q. Still the shaker would be next to the Grasshopper because there were some tanks between the Grasshopper and—they put the tanks in and after it passed out of the Grasshopper [139] it went into a tank and up an elevator and into another tank and up to the brushes and there is where I think the shaker was put in.

Q. Replaced the brushes? A. Yes.

Mr. CHAPPELL.—Q. What change, if any, was made in the pipes when the shaker was put in?

A. I don't know; I don't think I changed them myself.

Q. You saw them after the change was made, did you not? A. Yes, I think I did.

Q. Please describe what you saw after the brushes

(Testimony of S. R. Combs.)

were taken out and the shakers were put in.

A. I think we had—I would not say how many rows of pipe, but we had to keep that covered with water, to wash and rinse the fruit, as it went along down over the shakers and made the drops—I wouldn't say how much pipe we did have in—I could not say.

Q. How wide was the shaker?

A. Probably that wide (indicating).

The COURT.—Q. About 3 feet?

A. Something like that; 2 feet 8, something like that.

Mr. CHAPPELL—Q. How long was it?

A. Probably 6 feet.

Q. Did you make the shaker?

A. I helped repair it; I think I made some of the galvanized iron that was set in the bottom in V-shaped slats.

Q. When did you do that?

A. I done that for Mr. Monte, I think.

Q. Did you not do that when Mr. Fontana was superintendent? A. I could not say.

Q. Don't you know that the shaker was put in when Mr. Fontana was superintendent?

A. No, I do not; it is too long back for me to remember. [140]

Q. You are not certain about that, is that right?

A. Not that part of it, no; but I remember working on these things, but could not say just when it was.

Q. How big was the spray-pipe that was put over

(Testimony of S. R. Combs.)

the shaker? A. I think inch pipe.

The COURT.—How large?

A. Inch pipe.

Mr. CHAPPELL.—Q. How long was it?

A. I could not tell you just exactly the number of feet of them; I know they were long enough to get plenty of water on top.

Q. What sort of openings were in these spray-pipes over the shaker?

A. Drilled in, about 1/8 inch holes, perforations.

The COURT.—Q. I thought you said a few minutes ago you did not think the pipes were changed over the shaker?

A. I think there was about that size pipe, inch pipe, and it would be about 1/8 inch hole, because I have made perforations for the brushes out of the black pipe.

Q. What I mean is, I understood you to mean from your answer awhile ago you did not think that the pipes were changed when the shaker feature was put in in place of the brushes, but the same pipes were used, the same character of pipes?

A. I did not say they were changed, I do not think.

Q. No; I say that is what I understood you to say. You do not think they were changed?

A. I don't know; I say I don't think that I had changed them.

Q. That is what you meant? A. Yes.

Mr. CHAPPELL.—Q. When the shaker was put in was not a pipe put up above it that had saw-kerfs cut across the pipe?

(Testimony of S. R. Combs.)

A. I would not say because I don't remember.

Q. Weren't the slots cut in the pipe with a 1/16 inch hack-saw? [141]

A. That is what I said, I don't remember; I could not say whether they were cut in that way or not; I don't think I made them or had anything to do with that part of it.

Q. Then you don't know whether it was saw-kerfs or holes, is that right?

A. I don't know whether that was saw-kerfs or holes.

Q. What was the material of which the brushes were made in the brushing-machine?

A. I think they were wood fibre.

Q. Might they not have been of horse-hair?

A. No, I am too well acquainted with horses.

Q. Might they not have been bristles or hair of some kind?

A. No, I am pretty well acquainted with the old orange brush from the south.

The COURT.—Q. Were these the same character of brushes that they used on the orange brush?

A. I think the same thing; I think they were sent up from the south for us from down about Whittier or somewhere there; they were not new brushes, I know that, when they came.

Mr. CHAPPELL.—I think that is all.

Redirect Examination.

Mr. LYON.—Q. How do you fix it as the year 1902 when you worked under Vernon and saw this brush machine being used in peeling peaches?

(Testimony of S. R. Combs.)

A. I have a very vivid recollection of that because I lost a brother on the 1st day of March, 1902; also of the death of Mr. Vernon.

Mr. LYON.—That is all.

Testimony of Newton Lushbaugh, for Defendant.

NEWTON LUSHBAUGH, called for the defendant, sworn.

Mr. LYON.—Q. Where do you reside, Mr. Lushbaugh? A. Fresno. [142]

Q. How old are you? A. 48 past.

Q. What is your occupation?

A. Machinist, working around machinery in some capacities.

Q. Did you ever, at any time, have any connection with the fruit-canning business?

A. Yes, I worked for the fruit canners three or four different occasions for a year or two years at a time.

Q. Did you ever work for the California Fruit Canners' Association?

A. I have, yes, three different times.

Q. When?

A. I worked in 1902-03 in Fresno, and I believe 1907 and 1908 again in Fresno, and I believe it was 1912 and 1913 in Visalia.

Q. Do you remember who was superintendent when you worked for the California Fruit Canners' Association in 1902? A. Mr. Vernon.

Q. Mr. C. J. Vernon?

A. Charlie Vernon we called him, which is the same party no doubt.

(Testimony of Newton Lushbaugh.)

Q. Do you know how they peeled peaches there in that California Fruit Canners' Association packing-house at Fresno while Mr. Vernon was there?

A. Yes, I think I do.

Q. Will you please state how they did it.

A. They peeled them by machine.

Q. Can you describe such machinery to us?

A. Well, in the start the peaches went through a solution or a bath of water and caustic soda, and after that they went through this machine that gave them a bath or immersion, whatever you call it, they passed through a bath of fresh water, supposed to be fresh; after that they went through a set of brushes; from there on to a conveyor-belt to the canning tables.

Q. Please describe to us this set of brushes that you have referred to, how they were arranged and how they worked. [143]

A. In the season of 1902 they were brushes I should judge close to 4 feet long, possibly somewhere in the neighborhood of a 6-inch brush; that is, the diameter of the brush was 6 inches; placed on a slight incline with the peaches or fruit coming to the brushes at the highest point, and with a belt, an endless belt arranged directly between the brushes and below the center to carry the peaches on through until they were discharged from that machine; and also over the belt and between the brushes, I could not say how high above the brushes positively there was a pipe; at first the pipe was made of galvanized iron or tin; I don't remember exactly which, but later

(Testimony of Newton Lushbaugh.)

we had occasion to change this and made it out of common gas-pipe, and this pipe was perforated with three rows of holes; one row of holes directed down and the others possibly at an angle like that (illustrating); there was water forced through that pipe playing on the brushes and on the fruit.

Q. Now, then, Mr. Lushbaugh, you say that after the peaches were treated with this solution they went into an immersion? Please tell us how that water was arranged and how the peaches got out of there.

A. That was simply a tank possibly $3\frac{1}{2}$ feet long and something over 2 feet wide and we had a carrier belt running up out of that tank; that carrier belt was made with steel slats, out of what we call band-steel, and that running would carry the peaches up.

The COURT.—Q. Up where?

A. Out of that tank and dumped them into the next tank, and with the same carrier arrangements there we carried them up and dumped them into a little hopper; then we had an elevator that took them up and put them into the end of the peeling-machine.

Mr. LYON.—Q. Do you know to what extent that machine was [144] used that season?

A. We used it on I think practically the entire output of the season.

Q. In what form were the peaches put through this apparatus and process?

A. At first we experimented with that, that is, putting the peaches through whole; that was only the start; after that the peaches were cut in half and pitted before they went into the machine.

(Testimony of Newton Lushbaugh.)

Q. Do you know why they changed from using the whole peaches to the half peaches?

A. Well, I think there were two reasons as well as I remember; one was that in the eye of the peach where the stem grew that it did not fully clean them in there of the skin, where it was dissolved or otherwise, and another thing that the peaches were very slippery after they went through there and it was unhandy for the women to hold them and pit them.

Q. How are you able to fix the year as 1902?

A. Well, two or more reasons; one reason I can fix it is that Mr. Vernon was killed or badly injured in the Owl wreck which was in 1902; another reason I can fix it by is that I was there in 1902 and '3, those seasons, those two seasons, and then I quit the employ of the canning association.

Mr. LYON.—You may inquire, Mr. Chappell.

Cross-examination.

Mr. CHAPPELL.—Q. How long was Mr. Vernon superintendent?

A. In the season of 1902, I think I began work there, it must have been the latter part of April or the first part of May; now, just how long he had been there before I could not say positively.

Q. Who was superintendent in 1903?

A. A man by the name of Monte. [145]

Q. How long was he superintendent, if you know?

A. Well, I know very close to that. He came early in the spring, and he was there possibly up till just at the close of the canning season, I should judge, sometime in September.

(Testimony of Newton Lushbaugh.)

Q. Of 1903? A. Of 1903, yes.

Q. Who came as superintendent after him, if you know?

A. There was a young man there temporarily for a little while and then Mark Fontana came; that is, I believe it was Fontana; I left there shortly after Monte came.

Q. You don't know Mr. Fontana personally?

A. I do, yes.

Q. What were your duties about the plant in the year 1902?

A. I was second engineer, that is, taking care of the shop and building and tools and taking the engineer's place most of the time at nights; he was an old man that could not stand the long shift.

Q. What did you have to do about the spray-pipes, if anything?

A. Well, I remember of making them out of common water-pipe, on account of the fact that this tin pipe or galvanized iron pipe, the action of the water would wear the holes so large in that, that they could not get enough force to the spray, and I know I helped to replace them once or possibly twice during the season, making them out of common pipe and perforating them.

Q. How did you perforate them?

A. With a hand-drill.

Q. How large a drill did you use?

A. It was very small; possibly, I should judge, about 3/16ths; maybe not so large; I don't know exactly.

(Testimony of Newton Lushbaugh.)

Q. You put in three rows of holes with a $3/16$ inch drill, in the pipe, did you?

A. Whatever drill we used; I could not say it positively was $3/16$ ths. [146]

Q. You put in three rows of holes? A. Yes.

Q. It might have been an eighth of an inch drill, I suppose, or couldn't you bore that small a hole with a hand-drill? A. Yes.

Q. Do you think it was as small as an 8th?

A. I could only answer that question—I could not state just what size they were, but I know they were small holes, I know that.

Q. You are inclined to think though they were $3/16$ of an inch?

A. Yes, that would be my judgment.

Q. They were not so small as one-eighth?

A. I could not say.

Q. How far apart were the holes on the pipe?

A. I could not say; I do not remember.

Q. There were three rows of them. you say?

A. Yes.

Q. How long was the pipe?

A. The pipe was practically as long as the brushes, some were in the neighborhood of 4 feet.

Q. How large was this pipe?

A. It was either $3/4$ or an inch.

Q. Do you think the holes in the rows were 2 inches apart?

A. Well, I should judge they were a little more than that; if I were going to say as well as I can remember, I would say possibly 3 inches apart, $2\frac{1}{2}$ or

(Testimony of Newton Lushbaugh.)

3 inches, somewhere along there.

Q. Over the whole length of the pipe, which was about 4 feet? A. Yes.

Q. There were three rows of those holes?

A. Three rows.

Q. The holes in each row being about 4 inches apart?

A. I did not say 4 inches; I said 3 inches or somewhere in that neighborhood.

Q. About 3 inches apart? A. Yes.

Q. What supplied the water to this pipe that you refer to? A. At first it was city pressure.

Q. Then what? [147]

A. Later on we connected a pump with it.

Q. At what time do you mean by later on?

A. Later on during the season, but what time during the season I could not say.

Q. What did the pump connect to; where did it get its supply?

A. Directly out of the city mains.

Q. Was there any tank between?

A. That is, between the city main and the pump?

Q. The tank that the city main delivered into and the pump taking from the tank.

A. I would not be positive about that, but I hardly think—I know where the meter set in the plant, that is, on the city main, and I think we were connected on to the pipe after that passed the meter, but I do not think that we pumped out of the tank, no.

Q. How large was the pipe leading from the main?

(Testimony of Newton Lushbaugh.)

A. That is, you mean after we put the pump on or before?

Q. At any time; indicate the history, if there was a change made, indicate when it was made.

A. Yes, we made a change; at first we had a small pipe, I think one inch, connected to the machine; after that we changed and put in a 2-inch pipe, but I think that was before we put the pump on, we made that change; I remember making the change; we did not have water enough with the small pipe and we increased the size of the pipe.

Q. Did you do the work yourself?

A. I could not say positively whether I did, or not.

Q. Then you cannot say positively about the size, can you?

A. I know we increased the size.

Q. But you don't know to what size?

A. I believe it to be a 2 inch that we increased it to.

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Q. Did you ever see a 4 inch leading from the water-main into the California Fruit Canners' Association plant at Fresno?

A. No, I do not believe at that time there was a 4 inch leading in there.

Q. You worked there in the year 1906 and 1907, did you? A. I believe it to be 1906 and 1907.

Q. I think you said 1907 and 1908; was there or not a 4-inch lead at that time?

A. In 1907 or 1908?

Q. Yes. A. I don't know.

(Testimony of Newton Lushbaugh.)

The COURT.—Q. Did you work there in the same capacity in 1907 or 1908?

A. No; I was in the boiler-room in 1907 or 1908, and the boiler-room had been moved over to this side of the building.

Mr. CHAPPELL.—Q. How wide was the belt between the brushes?

A. I should think an inch; maybe an inch and a quarter; it was a small rubber belt, rubber or canvass.

The COURT.—Q. How far apart were the brushes?

A. The brushes were so arranged that we could adjust them, bring them closer together.

Mr. CHAPPELL.—Q. How was the belt supported?

A. That is, you mean where it ran between the brushes.

Q. Yes.

A. Of course on the bottom, for the belt came back—

The COURT.—He does not mean that; he means where it carried through.

A. It run on a wooden support.

Mr. CHAPPELL.—Q. Please indicate all the spray pipes that you saw in use about the Fresno machine in the year 1902.

A. To the best of my memory that was the only spray pipe about the machines, the one that I have described.

Q. Did you see any additional spray pipes in the year 1904? A. I was not there. [149]

(Testimony of Newton Lushbaugh.)

The COURT.—1903 was when he was there.

Mr. CHAPPELL.—Q. In 1903, I should say.

A. Yes, there was an addition to this spray pipe, for that season they enlarged, put on I think 4 brushes instead of 2; then there was another spray-pipe put on the new two brushes.

The COURT.—Q. A spray-pipe in the same relation to the brushes?

A. Yes, the same relation.

Mr. CHAPPELL.—Q. Was there any spray-pipes added beyond that, that you remember?

A. Not that I remember.

Q. Were you there all the season of 1903?

A. Yes, I was there all the canning season.

Q. Mr. Monte was then superintendent?

A. Monte was superintendent.

Q. Didn't Mr. Monte put some spray-pipes over the conveyors from the cold-water tanks into which the Grasshopper discharged?

A. I don't remember; that is, I do not remember of them being there; they might have been, but I could not say.

The COURT.—Q. Over what?

Mr. CHAPPELL.—Over the conveyors from the tanks.

Q. Did you ever see any shaker at the plant of the California Fruit Cannery Association at Fresno for shaking the peaches while they were being sprayed?

A. Not in 1902 or 1903; I did years later.

Q. There was no shaker there in 1902 or 1903, that you remember? A. No, I think not.

(Testimony of Newton Lushbaugh.)

Q. When did you first see a shaker there?

A. That was when I went back there in 1907 or 1908.

Q. What was the arrangement of the spray-pipes at that time?

A. Well, at that time, to the best of my memory they had discarded the brushes and were using the spray; they had a shaker [150] and spray throwing the water directly on to the fruit on the shaker.

Q. Please describe the shaker you saw then.

A. I don't remember it well enough to describe that; I cannot remember well enough to describe the shaker they had there in 1907 or 1908.

Q. Can you describe the spray-pipe or pipes that they used with it? A. At that time?

Q. In 1907 or 1908, at the time you just referred to?

A. No, I could not. I was up in there but very little time at that time. My duty was in the engine-room; it was out entirely to one side of the cannery; I was up there but very seldom during 1907 or 1908.

Q. To what extent were peaches peeled by hand in 1902 at this plant?

A. I think that very little, if any.

Q. You would be in a position to know about it, would you, if they were peeled by hand at that time?

A. Well, not necessarily, that I should take any notice of it; my duties did not have anything to do with the peeling; it might have been done, but I could not say.

Q. Did they peel some by hand in 1903?

(Testimony of Newton Lushbaugh.)

A. I think not, but I could not be positive, but I do not think they peeled any by hand either year.

Q. Did you examine the whole peaches that were peeled by the brushes when they were trying to do the work that way?

A. Well, but very little; I was around there more or less, yes; I could not say that I gave them a great deal of attention.

Q. How did you come to know about the hole around the stem of the peach?

A. I was around there part of the time more or less, and it was more from the talk that I heard there, that [151] it had failed to do the work in there, and what little I observed.

Q. Who talked about it?

A. I know the employees in general there—you know anything that way, when a machine is set up, if it fails to work, the employees would natutrally talk about it.

Q. That is, the brush would not reach into that place; is that right?

A. Well, I suppose—I don't know hardly how to answer that question.

The COURT.—Just answer according to your best memory.

A. I know that peeling the peaches whole did not prove satisfactory and they changed and cut them in halves.

Q. They did not go back at any time then during the canning season to peeling them whole again, after they once changed?

(Testimony of Newton Lushbaugh.)

A. I believe they did some of the low grades, the small stuff.

Q. What use was made of those?

A. They were canned, sealed up the same as the others.

Q. Sold to poor people, I suppose.

A. I could not say what they did with them; I guess they found some of them at the hotels in pies.

Mr. CHAPPELL.—Q. When was the spray-pipe put on to the Vernon machine, if you know?

A. Which pipe do you mean?

Q. The one above the brushes that you have described?

A. The one that I first described, made out of tin?

Q. Yes.

A. That came with the machine; that was a part of the machine.

The COURT.—Q. Were you there when the machines were installed?

A. Yes, I was there.

Q. Did you help install them?

A. I think Mr. Combs done most of the work on installing the peeling device; I remember of making these flat conveyors that I spoke of, I and Mr. Brown were working on the lower end of the machine, on the canning [152] machine, and to the best of my memory Mr. Combs done most of the work on installing the peelers and the brushes.

Mr. CHAPPELL.—Q. What was the relative work of the brushes and of the sprays—how did they work together on the Vernon machine, as you saw it

(Testimony of Newton Lushbaugh.)

worked during the season of 1902?

A. What do you mean?

The COURT.—Q. He means what was the function that the brushes performed, and what did the water accomplish?

A. I think they both worked together in removing the peeling; that is the best answer I can make.

Q. Can't you tell more definitely the effect of each instrumentality?

A. Well, the peaches were fed in, that is, on the upper portion of the belt running between the brushes, and as they passed on down by gravity to the lower end of the brushes, with the water spraying on them, it removed the skin.

Mr. CHAPPELL.—Q. How many peaches were in the brushing part at any one time, ordinarily?

A. That depends on how fast they were feeding the Grasshopper; of course, the scalders, if they fed that fast, there would be a large quantity in there; if they fed in slow of course there would be a smaller quantity.

Q. How did they run it ordinarily; how many bushels would they run through in a day?

A. I could not answer that question positively.

Q. Do you know what was done with the Vernon machine, what finally became of it?

A. No; the machine was still standing there in 1903 when I left there.

Q. You did not see anything of it when you got back in 1907; is that right?

A. To the best of my memory, yes; I think they

(Testimony of Newton Lushbaugh.)

discarded the brushes at that time.

Q. In the Vernon machine did you see any slime on the peaches after they came through the brushes?
[153]

A. Well, after they came through the brushes we ran them through another wash or another elevator before they reached the canning-table.

Q. And they washed them again after they left the brushes?

A. Yes, another wash before they got to the canning-table.

Q. How many people gave attention to the Vernon machine when it was in operation?

The COURT.—Q. How many operators did it require?

A. Mr. Hickie was there all the time I believe, and Mr. Combs was down there; I was there occasionally—

The COURT.—Q. You don't understand what he is asking you. What he is asking you is, how many operators were regularly required to operate that processing machine?

A. I believe two.

Mr. CHAPPELL.—Q. What did they do?

A. One man to feed in, to feed the fruit in and another to look after the machine in general.

Q. Do you know what the water pressure was at Fresno in the year 1902?

A. My recollection is, it was somewhere in the neighborhood of about 35 to 37 pounds at times, and other times it was less.

(Testimony of Newton Lushbaugh.)

Q. What was your information on that; how do you know about it?

A. Well, I guess I can best answer that question by saying that the superintendent at the waterworks at that time, and who is still there, is a very close friend of mine, and I have talked the matter over.

Q. Then you don't know of your own knowledge what the water pressure was?

A. No, but from information and belief it was somewhere about from 35 to 37 pounds.

Q. I just wanted to know it from yourself, not what somebody else told you. A. Yes.

Mr. CHAPPELL.—That is all. [154]

Redirect Examination.

Mr. LYON.—Q. Have you any personal knowledge as to the quantity of peaches that were processed through this Vernon machine in 1902?

The COURT.—He said he did not; he said he could not make any estimate of it.

Mr. LYON.—Q. You say that same machine was there in that cannery in 1903?

The COURT.—He has gone over that twice.

Mr. LYON.—Q. Was it used during the year 1903?

The COURT.—Q. He asked you if it was used during the year 1903.

A. Yes, it was used during 1903.

Mr. LYON.—To what extent?

The COURT.—If you have noticed his testimony, he has testified that he did not think that any peaches were peeled by hand at that institution in either 1902 or 1903, that they were all processed.

(Testimony of Newton Lushbaugh.)

Mr. LYON.—I understand, the question is withdrawn.

The COURT.—There is no use in repeating it because I notice what he testifies about.

Mr. CHAPPELL.—Q. In whose employ are you at the present time?

A. The Associated Raisin Company.

Testimony of John W. Hickey, for Defendant.

JOHN W. HICKEY, called for the defendant, sworn.

Mr. LYON.—Q. How old are you, Mr. Hickie?

A. 44.

Q. Where do you reside?

A. Fresno, California.

Q. What is your present occupation?

A. At the present not anything.

Q. What has your occupation been recently?

A. Packing-house foreman; that is, raisin packing-house foreman. [155]

Q. Were you ever at any time connected with the peach-canning industry? A. Yes.

Q. Ever work for the California Fruit Cannery Association? A. Yes.

Q. During what year or years did you work for the California Fruit Cannery Association?

A. 1902 and 1903.

Q. Under whom did you work at that time?

A. Which year? I worked the season of 1902 and 1903; that is, two canning seasons.

Q. In 1902 who was the superintendent?

A. Mr. Vernon.

(Testimony of John W. Hickey.)

Q. In 1903 who was the superintendent?

A. Mr. Monte.

Q. How do you fix the year 1902 as the year that Mr. Vernon was the superintendent?

A. Well, in several different ways I can fix that; during that canning season my wife's father took ill and passed away, and I asked for a lay-off to take my wife to Hanford during the illness and also a few days later I asked for a lay-off to attend the funeral, and it was granted to attend that funeral that year; that is one reason; another thing is the death of Mr. Vernon and his son after the season closed; I attended the services at Fresno, my wife and I.

Q. Through whom did you go to ask for these lay-offs?

A. Mr. Way, who was the plant foreman under Mr. Vernon.

Q. Do you remember how many peaches were peeled in the California Fruit Cannery Association's packing-house at Fresno in 1902? A. Yes.

Q. Will you please describe to us all that you remember about their apparatus and machine and how it worked?

A. The peaches were peeled in two different ways; they were peeled by process and also by hand.

Q. Give us the process end of it.

A. The process—which way do you want me to explain that? [156]

Q. In your own words, from beginning to end; tell us what they did in the beginning clear up until they

(Testimony of John W. Hickey.)

put the peaches in the can, in any way you want to start in.

A. Well, I had charge of the peech-peeling solution, this apparatus or machinery; that was my position or job or occupation at that time. I attended to putting the caustic soda in this machine or grasshopper; it was known by both names; we called it Grasshopper, and commonly called it peeling machine; I attended to putting the caustic soda in this machine and heating it by steam, kept the steam regulated to keep it at a boiling point and also looked out to see that the peaches were peeled all right by going through this machine, so that they were properly cleaned. Now, shall I describe this machinery?

Q. Yes, tell us what happened.

The COURT.—Q. What was the process? Describe the machinery in connection with the process; start in at the beginning, the initial point. That is what he wants you to do.

A. This machine was made of metal, I presume, iron, possibly, 8 or 10 feet long; the main body of the machine was practically square; the body was round; it set on legs; it had a little elevation, it came to a round point where the peaches came out, and on the end was a pulley or wheels that the belt was connected on to that drove this auger or screw that carried peaches through this solution, and that pulley had three spaces for three speeds, I believe; at the first start there was not exactly a Grasshopper; but there was a little extension came out from the side, and we dumped the peaches into that from the boxes by hand,

(Testimony of John W. Hickey.)

and a little later on they connected a belt, a long carrier that they carried the peaches to this machine with and they entered the machine from this belt and we had a loose pulley there to put this belt in gear and stop it at any [157] time; the first peaches we put through we put through whole; before this belt was installed the peaches were pitted by hand, in halves, and dumped in; they were put up there on trucks and boxes, and we dumped the halves in, and then we installed this belt and we did away with the trucking; but the girls pitted the peaches on either side of this belt and we dumped them on the belt and also during the most busy part of the season we had girls or women that pitted on extra tables, and they were carried over and dumped on this belt, and they passed through this caustic soda solution and dropped into a tank of water, and from that tank of water they were carried with a kind of an elevator or a conveyor and dropped into another tank of water; and from that tank of water they were carried by the same process and dropped on to another little elevator that lifted them up and dropped them into a brushing machine or cleaning machine; they passed through that and dropped into another tank of water, and from that tank of water were elevated up and went on to another carrier belt and were put into separate bins on either side of this belt, to the ladies that canned the peaches; a little later on that belt did not quite carry the capacity of the fruit and they extended a side belt from the end of that and had bins on that also; and

(Testimony of John W. Hickey.)

ladies and girls to can peaches from that.

Q. Now, coming back to this brushing means, can you tell us how that was constructed and how it operated, what it was?

A. I believe I can. It was incased in wood; there were brushes, revolving brushes inside of it; there was simply a frame around there so that the peaches would not fall out and scatter around and water slop all over everything, and this little elevator from this trough carried them up and dropped them into a kind of apron or chute that slid them right down on [158] these brushes, the brushes revolved around and they passed through that; there was a little belt that run between these revolving brushes that helped carry the peaches through so as to keep them turned and clean the peaches; over these brushes we had a pipe, perforated pipe, spraying water over these brushes and peaches to clean them. I did not help make that. That was there when I went to the cannery.

Q. Did you ever particularly observe how the water was thrown into that machine?

A. From this perforated pipe do you mean?

Q. Yes.

A. Well, it had little holes all along on the under side of this pipe and the water sprayed out, the same as making a focus on anything, it spread enough to cover these brushes and peaches that passed through there.

Q. Now, you say you were still there in that packing-house in 1903?

(Testimony of John W. Hickey.)

A. During the next canning season I was there. At the end of this season I was not there any more until the next season, 1903.

Q. During the season of 1903 what did they use in peeling peaches?

A. They used the same proposition and also peeled by hand.

Q. You occupied the same position in 1903?

A. Yes, except they had made some improvements, and they had added on some more brushes, I believe, and sprays.

Q. What do you mean by added on more brushes?

The COURT.—Q. You mean an addition in the line of brushes or a new set of brushes?

A. A new set. You see at first we had, if I remember rightly, just one set of brushes and they simply put another set to increase the capacity that could get through; you see only about so many could get through; I don't know how many, but of course if they crowded them they would [159] bunch up in there and it did not do as good work.

Mr. LYON.—That is all.

The COURT.—We will take a recess until 2 P. M.

(A recess was here taken until 2 P. M.) [160]

AFTERNOON SESSION.

JOHN W. HICKIE, Cross-examination.

Mr. CHAPPELL.—Q. When did you first become acquainted with Mr. Charles J. Vernon?

A. In the year 1902, in the month of June.

Q. When did you become acquainted with Mr. Monte?

(Testimony of John W. Hickey.)

A. In the year 1903, I believe that was in June.

The COURT.—I observe a couple of witnesses here—that I suppose are to be witnesses, are they, to be called in this case? Mr. Bentley and Mr. Carr.

Mr. LYON.—Yes, they will be called.

The COURT.—The witnesses in the case have been put under the rule of remaining out of the court-room until called.

Mr. CHAPPELL.—Q. Who employed you in the year 1902 at the California Fruit Cannery Association plant? A. Mr. Vernon.

Q. How long after that before you met Mr. Way?

A. The time that I saw him with regard to going to work was perhaps one or two weeks before I met Mr. Way; I went down to go to work, and Mr. Vernon introduced me to Mr. Way and he said, he will be your foreman, you shall receive orders or instructions from him in addition to my own instructions.

Q. What other work was done on this floor besides the operation of the peeling machines? I think you said Mr. Way was floor foreman?

A. Floor foreman. I don't understand what you mean by other work.

Q. What other work was done on that floor?

A. You mean in that department?

Q. Yes. A. Any work.

Q. You say he was floor foreman; what do you mean by that? [161]

A. He was foreman under Mr. Vernon, to look out for—in fact he had charge of all the laborers in that

(Testimony of John W. Hickey.)

department that were canning and cooking and processing fruit, and I presume the receiving; I don't know just how far his authority extended in that line.

Q. What peeling arrangements were made besides the machine there at that time when you were employed by Mr. Vernon; was there any hand-peeling done? A. Yes.

Q. How much hand-peeling was done, as you remember?

A. I could not answer that; it would only be a guess because I did not pay any attention to the hand-peeling at all; I had no business over on that side.

Q. You don't know whether they used a little crank-machine or paring-knife, do you?

A. I don't remember anything about a paring-machine, but I do know they used paring-knives, little hand-knives like ladies peel with; I saw those in use, but I don't remember seeing those little old fashioned hand peeling machines there.

Q. Was it any part of your duty to see if there was any lye left on the peaches when they got through the machine?

A. Yes, that was part of it.

Q. Did you find any lye? A. Yes.

Q. Explain what your duties were in that behalf. What did you do about it when you found lye?

A. I did not do anything; I simply looked at the peaches occasionally and when they were pitted in halves, that left a little cavity in that half of the

(Testimony of John W. Hickey.)

peach, and in going through this lye solution naturally a little lye would be left in that where the water brushes failed to or had not removed it.

Q. Then you simply noticed it and let it go on into the cans, did you, or what did you do about it?
[162]

A. Well, I did not do anything about that; my duties stopped at the end of this machine; the canners was another thing. I did not have anything to do with the canners; I would call their attention to it sometimes and they would look at it and take a thumbnail and kind of scrape that little jelly out, and for a little while they had girls on either side of the tank doing that sort of thing.

Q. How many girls did they have?

A. Sometimes two, and I believe a few days they had four; not all of the peaches—when I said lye on the peaches, not all were in that condition, but some that the water had failed to hit in there or the brushes had failed to remove.

Q. How about the whole peaches, any peel left on those ever? A. At times there were, yes.

Q. To what extent were whole peaches put through the machine?

A. Not a very large extent; that was merely an experiment at the start.

The COURT.—They did not recur to that method after the first trial?

A. Yes. Later on they had a lot of real small peaches that were too small to pit or split in half and they ran those through whole and canned them

(Testimony of John W. Hickey.)

as pie-fruit or something; I don't know what grade they put them in, but they ran them through; I don't know how many.

Mr. CHAPPELL.—Q. Did you notice how thoroughly these small peaches were peeled; was there any peel left on these that you noticed?

A. Occasionally, yes; not often. I was supposed to have this solution strong enough to loosen this peel, but at times there would be a peach that would be a little more green or perhaps a scar on it, or a little gum that this caustic solution did not remove or anything else would remove, for that matter, of it, and you would cut it off. At times we [163] would re-run some of that to see if it would remove it; that is, put it through the process a second time.

Q. Do you know whether the high grade fruit was run through the machine or not in the year 1902?

A. I do, that is, to a certain extent; I know that the very best grades were not run through the machine.

The COURT.—Q. How were they treated?

A. They were hand-peeled and then dipped in steaming water with a wicker basket so that they could get them in the can; that is extra fancy, we call them, extra size; I simply noticed that passing by when the occasion required or I happened to be going out or anything like that; I had not anything to do with that part of the plant.

Mr. CHAPPELL.—Q. Considering the entire line of the peeling machinery when Mr. Vernon was there, please indicate the manner of the delivery of

(Testimony of John W. Hickey.)

the water to the peaches in any way, from beginning to end.

A. That would include the tanks?

Q. Yes,—any place where the water was delivered to the peaches.

A. There were tanks; the water was piped in one end and had an overflow on the other end, and the water was continually coming in and going out of the tanks; all three tanks were arranged practically about the same; in this box where the brushes were inclosed the water was brought to that with pipes, water-pipes, and the pipe came up with a little wheel faucet to open to allow the water to pass through, that supplied this spray pipe that went over these brushes.

Q. Was there any other water supply to these tanks where the brushes were, than that spray-pipe as you call it?

A. No. That water went directly from there.

Q. Was it box water-tight so that it held the water around [164] the brushes?

A. It was not necessarily water-tight because the water could pass on down through and run off from underneath; that box proposition was you might say just walls; of course it had a lid on top that kept the water from the brushes from flying out or the peaches flying out, something like that; it kept it enclosed there.

Q. How close to the sides of the brushes were the sides of the box?

(Testimony of John W. Hickey.)

A. I could not say exactly how close they were; perhaps a few inches.

Q. Which way did the brushes revolve?

A. They both revolved the same way, one this way and the other went this way, or vice versa; both practically revolved the same way, but it looked as though they revolved in opposite directions.

Q. What work did the brushes do?

A. The brushes helped remove the particles of peeling that adhered to the peach; in other words, helped clean it.

Q. Did the brushes ever clog with peel?

A. No.

Q. What precaution was taken to prevent that?

A. There was this water-spray I suppose; I don't see what else. The brushes revolved; the only time they ever stopped was when a belt would break or something like that.

Q. How fast did the brushes revolve, if you know?

A. I could not say because I never timed them, paid any attention to that part of it.

Q. Did they run very rapidly or slowly?

A. Very rapidly.

Q. How were the peaches fed through there?

A. Through the brushes?

Q. Yes.

A. They were brought up from the second tank between the brushing machine and the grasshopper or peeling machine and [165] carried up a canvas elevator with wooden slats across and dumped on a galvanized iron, a little kind of a chute or an

(Testimony of John W. Hickey.)

apron, and went directly to the brushes; that slid in like that, and the peaches slid right directly on the upper end of the brushes, and between those brushes was a little belt, a revolving belt.

Q. The peaches rested on the brushes rather than on the belt, do you mean?

A. No, not necessarily that; the position of this belt between the brushes—the revolving of the brushes and the belt carried the peaches on through.

The COURT.—Q. Did the belt revolve?

A. No, the belt run continuously, the same for instance, as two brushes like that—the belt would run lengthwise with the brushes, and the brushes revolved.

Mr. CHAPPELL.—Q. You spoke of something being added in the year 1903; just explain what was added.

A. That was another set of brushes in there, to increase the capacity.

Q. Did the same conveyor deliver to both sets at that time in 1903, or was there another conveyor?

A. I think they put a new draper in there, a new little conveyor; I am not sure about that; I am under the impression that they put a new one in on a little wire.

Q. How large were these brushes? Give their length and their diameter.

A. I never measured them, but I should judge about 4 feet long and possibly 6 or 7 inches in diameter.

Q. How wide was the belt between them?

(Testimony of John W. Hickey.)

A. It was about an inch and a quarter or an inch and a half, possibly

Q. In the year 1903 were there three brushes or four brushes?

A. There were four, not three. [166]

Q. Do you know who put them in? A. No.

Q. Did you notice any difference in the spray-pipes in 1903 over 1902?

A. Only there was an extra spray-pipe added; they changed the spray-pipes in 1902 while I was there

Q. What changes were made in the spray-pipes in 1902?

A. The original pipes were taken out and new ones put in; the original pipes were made of a metal similar to that galvanized metal and had been, well, hand-made—that is, they were not like a regular water-pipe, and they wore out; the perforations got too large and they simply took those out and put in iron pipes, perforated pipes.

Q. What is your recollection about the diameter of the sheet-iron pipe?

A. I think that pipe was about possibly an inch or an inch and a quarter.

Q. What was the size of the holes in it?

A. Originally they were about possibly one-sixteenth of an inch or a little larger, but they kept wearing larger all the time, they got to be too large to be of any use.

Q. What wore them larger?

(Testimony of John W. Hickey.)

A. The water; that is all that could pass through the holes.

Q. How long did it take the water to wear them larger?

A. I don't remember just how long after the season started or when I started to work before they made this change; I think within possibly two or three or four weeks.

Q. What kind of a pipe was then put in?

A. An iron pipe.

Q. How large?

A. About an inch or three-quarters of an inch, I should judge; I never measured the pipe; I did not put it in.

Q. How large were the holes in it so far as you noticed?

A. I should judge they were about one-sixteenth of an inch.

Q. Weren't any larger than that you think?

A. I could not swear they were any larger; I am pretty sure [167] they were not smaller than that; I just simply noticed when the men were making the change and putting the other pipes in—I did not pay very much particular attention to that; I had other things that I was doing at the time they made this change, cleaning up and so forth.

Q. How many holes were there in that pipe, that is, how close together and how many rows?

A. I could not tell you how many holes; I never counted them; there were a good many though.

The COURT.—Q. How many rows?

(Testimony of John W. Hickey.)

A. I should judge about three rows, and then there might have been little extra holes in between there.

Mr. CHAPPELL.—Q. About how far apart were these holes in the rows?

A. Possibly $\frac{3}{4}$ of an inch or an inch.

Q. Weren't they 2 inches apart?

A. I do not think they were; no; I think they were even closer than an inch apart; they were pretty close together; I never measured the distance or paid very much attention to that part of it.

Q. Do you remember whether or not there was some spray-pipes over the conveyors from the tanks into which the Grasshopper delivered in 1903 when Mr. Monte was there?

A. Spray-pipes over the tanks to conveyors that delivered from the tanks.

Q. Which conveyor do you mean?

The COURT.—Any of the conveyors that carried them out of the tank.

Mr. CHAPPELL.—Q. Any of the conveyors that delivered from the tanks?

A. I am under the impression that over this third tank, the last tank that the peaches were delivered from, there was a spray over that.

Q. That was put there during the time that Mr. Monte was there; is that right?

A. I don't know what time it was [168] put there; if I remember right, if there was such a one—that has passed my recollection—but if there was one put there, I am under the impression, since you mention it, there was one over this last tank; I think

(Testimony of John W. Hickey.)

that was put there under Mr. Monte's supervision, I presume.

Q. You are not sure that there was such a thing there though?

A. No, I am not sure; I would not swear that there was or was not; I am under the impression that there was.

The COURT.—Q. You mean over the tank or over the conveyor?

A. If I remember right, if there was one, it would not do any good over the tank; it would naturally have to be where the peaches left the tank—that would be the only object I can see for the spray there, to simply spray the peaches.

Q. It is not what it might have been, but what are the facts about it. Do not speculate on it, but tell us what your memory is. A. I could not say.

Mr. CHAPPELL.—Q. There was certainly nothing of that kind there in 1902; is that right?

A. I do not think there was; I do not remember one.

Q. Do you know whether Mr. Vernon was claiming to be an inventor of this structure and applying for a patent?

A. Not until the end of that season, just as I was leaving, he told me that the machine under his estimation was very much of a success and spoke to me with regards to working for him the following year, and I asked him if he had a patent, and he said, yes.

Q. Did you know what became of the machine that was used in 1902, so far as the brush part was con-

(Testimony of John W. Hickey.)

cerned? A. You mean that brush machine?

Q. Yes.

A. That was part of the same machine that was used in 1903. [169]

Q. You don't know anything about it beyond 1903?

A. No.

Q. Did you have anything to do with the peach canning business anywhere after 1903? A. No.

Q. You don't know anything about the machinery after that date?

A. Except in 1904, I passed through this cannery and Mr. Monte says "Come and see the changes I have made," and I just passed by and took a casual glance, and I said, "That looks all right," and I did not care anything about seeing that machine and I went on to other places of the building.

Q. That was in 1904?

A. That was in 1904, yes.

Q. Are you sure that Mr. Monte was there in 1904?

A. Pretty sure.

Q. Was that Mr. Fontana the superintendent at that time?

A. Mr. Mark Fontana, you mean?

Q. Yes.

A. I don't remember; it seems to me that Mr. Fontana was there but I don't know in what capacity.

Q. Were any peaches peeled by hand in 1903?

A. Yes.

Q. About the same as in 1902?

(Testimony of John W. Hickey.)

A. Well, I could not say anything about that.

Mr. CHAPPELL.—That is all.

Mr. LYON.—That is all.

Testimony of Robert I. Bentley, for Defendant.

ROBERT I. BENTLEY, called for the defendant,
sworn.

Mr. LYON.—Q. You reside in San Francisco, Mr. Bentley? A. Yes.

Q. How old are you? A. 52.

Q. What connection have you with the California Fruit Canners Association?

A. General Manager.

Q. That is a corporation of the State of California? A. Yes.

Q. With its principal place of business in San Francisco? A. Yes. [170]

Q. How long has it had its principal place of business in San Francisco?

A. Ever since its incorporation in 1899.

Q. Did it have its principal place of business in San Francisco at the time of the fire of April, 1906?

A. Yes.

Q. In that fire was the office of the association burned and destroyed? A. Yes.

Q. Did that fire destroy any records or letters received and copies of letters sent by the association prior to April, 1906?

Mr. CHAPPELL.—We wish to object to that as too indefinite.

The COURT.—What is the object of this?

(Testimony of Robert I. Bentley.)

Mr. LYON.—I want to lay a foundation for the introduction of secondary evidence.

The COURT.—Why do not you ask him to produce a letter; if he does not produce it then you can show why he can't produce it; that is the proper way to do that; this other is wholly immaterial, so far as at present appears.

Mr. LYON.—Can you produce the original of the letter written by E. H. Kennedy, from Los Angeles, California, and addressed to the California Fruit Cannery Association at San Francisco, and dated on or about August 5, 1903? A. No.

Q. Why not?

A. Because if it was ever received it was destroyed in the fire.

Q. The California Fruit Cannery Association has an officer or managing employee by the name of T. B. Dawson? A. Yes.

Q. What position does he hold?

A. Assistant General Superintendent.

Q. Did he hold that position in February of this year? A. Yes.

Q. Can you produce the original letter of date "Los Angeles, California," or "Lankershim, California," dated "January 25, 1916," addressed to T. B. Dawson, California Fruit Cannery Association, San Francisco, Cal., and signed by Mr. E. H. Kennedy? [171]

Mr. CHAPPELL.—We object to that, if your Honor please; it does not appear to be material; it is no matter of any consequence in this case.

(Testimony of Robert I. Bentley.)

The COURT.—What is the date?

Mr. LYON.—January 25, 1916; it will be remembered that we are now endeavoring to prove and will prove the refusal of these parties to give us any information or access to their plant.

The COURT.—You had better proceed then in the proper way; it is wholly immaterial at this time.

Mr. LYON.—The question is withdrawn.

Q. Were you in the city of Washington, D. C., on or about February 7, 1913? A. Yes.

Q. Did you on that date and before Calvin T. Milans, a Notary Public for the District of Columbia, make an affidavit—

Mr. MILLER.—We object to that as immaterial, irrelevant and incompetent, whether he made an affidavit or not.

Mr. LYON.—Wait a minute; I have not finished the question,—in words and figures substantially as follows:

“Robert Irving Bentley, being duly sworn, states as follows:

That he is forty-eight years of age; a resident of San Francisco, State of California; that since the year 1899 he has been the General Manager of the California Fruit Cannery Association, a Corporation organized under the laws of the State of California, whose business is the canning of fruits and vegetables, and the packing of dried fruits; that during his experience as Manager of the said corporation he has been brought in contact with the various methods and machines employed by the cor-

(Testimony of Robert I. Bentley.)

poration in its different plants in the State of California, and is familiar with various machines used at different times for [172] removing the peel from peaches; that during the fruit season of 1902, namely, during the months of July, August and September in said year, there was installed and publicly used and operated at the factory of the California Fruit Cannery Association, the corporation above named, at Fresno, California, a machine, which as deponent verily believes, was made by a party named Miller at Glendora, California, and which was built for the purpose of removing the peel from peaches after the peach had been subjected to or placed in an alkali bath; that the machine was purchased by the said corporation for the purpose of removing the skins from peaches, and was a machine wherein two long rotary brushes were employed arranged parallel with each other and separated so as to leave a space there between and rotated by suitable mechanism; that between the brushes and slightly below the same, was an endless carrier which was connected up to the driving mechanism of the machine and was supported below its upper course by a platform or support. This carrier extended the length of the machine and was used to receive the peaches fed into the machine and to carry them forward between the brushes; that in addition to the two rotating brushes and the endless carrier there was a water-pipe arranged slightly above the brushes, but directly in line with the carrier, so that the pipe lay in a plane between the two brushes and

(Testimony of Robert I. Bentley.)

slightly above the brushes. This pipe had three rows of perforations extending throughout its length and was coupled up with the water mains of the City of Fresno. The machine was provided with a conveyor for conveying the peaches from an alkaline bath on to the endless carrier and thence by means of the endless conveyor carried forward between the brushes. As the peaches progressed through the machine and between the brushes they were [173] directly subjected to the jets of water issuing from the perforations in the pipe under water-main pressure and were also turned and moved by the brushes, the brushes and the water jets together serving to remove the skin which had been previously treated to the alkaline bath. The peaches were first treated in the alkaline bath for the purpose of disintegrating the skins, and while in this condition were fed into the machine which removed the disintegrated skin or peeling from the fruit and washed and cooled the fruit so that the fruit was discharged from the machine water cooled and with the skins removed. Deponent further states that the jets of water were directed directly on to the peaches as they progressed through the machine, and the peaches were cleaned and cooled, and the brushes were used in connection with the water jets to assist the loosening and removal of the disintegrated peeling or skin, as aforesaid.

Deponent further says that the machine so purchased and used during the said months of July, August and September, 1902, was a machine made in

(Testimony of Robert I. Bentley.)

substantial accordance with the machine shown and described in the attached patent to James M. Baker, Vernon A. Chalker, Gorace G. Baker and Lindsey O. Ferguson, entitled 'Fruit, Cleaner, Brusher and Washer.' No. 616,284, issued Dec. 20, 1898. The said so-called Baker et al. machine which was used for removing the peel from the peaches in the aforesaid corporation's factory at Fresno, California, was used publicly and openly, and handled the entire tonnage of peaches as received at the said Fresno factory of the said corporation during the said months of July, August and September, 1902, and that the said pack amounted to about one hundred thousand cases of twenty-four cans each, each can containing as deponent now verily believes, five [174] peaches to the can.

Deponent further states that this machine was used in the aforesaid factory openly in the view of all persons coming into or upon the said premises and with no secret restrictions and with no restrictions whatsoever. Deponent further states that this machine operated well and was successful in its operation for the purposes for which it was intended, namely, the removal of peel from peaches.

Deponent further says that during the year 1903. the California Fruit Cannery Association, the corporation aforesaid, purchased three additional machines of the type above described and herein called the Baker et al, machine, and openly and publicly and without any restrictions used the said three machines, one each at three of its other factories

(Testimony of Robert I. Bentley.)

located in the State of California. Deponent in his capacity as manager of the aforesaid corporation had occasion to visit the plant at Fresno during July, August and September, 1902, on different occasions and personally saw the said Baker et al. machine in operation.”

Mr. MILLER.—We object to it as immaterial, irrelevant and incompetent, whether he made any such affidavit or not.

The COURT.—What is the purpose of this?

Mr. LYON.—The purpose of this is to show that he made this affidavit, because we will show that the plaintiff in this case had knowledge of this, and that it was upon the basis of this knowledge and knowledge of this affidavit and of this prior use that the license agreement was entered into between the Dunkley Company and the California Fruit Canners Association for a free license and consideration of their having nothing to do with this litigation, and as far as their officers and agents and employees are concerned, in not giving any [175] information or assistance in the defense of this litigation.

The COURT.—It seems to me you are getting your cart before your horse; you interrogate this witness—he is your witness—as to what the fact is as to their entering into a license with the plaintiff and then interrogate him as to the circumstances, and if they are not in accordance with the statements made in that affidavit then you can ask him of course if he made this affidavit.

Mr. LYON.—We are not using the affidavit as

(Testimony of Robert I. Bentley.)

proof of the facts contained therein, we are using—

The COURT.—I understand what you are using it for, but I say you are getting at the wrong end first; at the present time it is to my mind not only immaterial but incompetent.

Mr. LYON.—Q. Have you refused to give information to or access to any of the records of the California Fruit Canners Association or its packing-houses to the defendants in this case, their attorneys or any persons connected with them? By “you,” I mean the California Fruit Canners Association or any of its officers, with your knowledge?

Mr. MILLER.—We object to that as too general, vague and indefinite.

The COURT.—Yes, I think so. You must specify what you are asking about.

Mr. MILLER.—The only information heretofore is a letter of January 16, 1916, which of course was after this litigation commenced. Now, if they have got any refusal since the commencement of this suit let them specify it.

Mr. LYON.—Q. The California Fruit Canners Association is a licensee of the Dunkley Company, the plaintiff in this case? A. Yes.

Q. When was that license entered into?

A. 1913. [176]

Q. What date? A. I can't recall the date.

Q. Has the California Fruit Canners Association been a licensee of the Dunkley Company, the plaintiff in this case ever since 1913?

A. If the agreement that we are operating under

(Testimony of Robert I. Bentley.)

at present, is dated 1913, yes.

Q. Is that agreement in writing? A. Yes.

Q. Have you it with you?

A. No, Mr. Carr is the custodian of our documents; I think he has it.

Mr. MILLER.—Mr. Carr, the Secretary, has it; he is outside. We have no objection to it.

Mr. LYON.—Q. I show you a document and ask you if that is the license agreement you refer to?

A. Yes.

Mr. LYON.—We offer in evidence the document referred to by the witness and ask that it be marked Defendant's Exhibit "H."

The COURT.—It will go in.

Mr. LYON.—I will read it at this time.

(The document is marked Defendants' Exhibit "H" and is as follows:)

"LICENSE.

Whereas the DUNKLEY COMPANY, a corporation duly organized and existing under and by virtue of the laws of the State of Michigan, having an established and regular place of business located and situated at Kalamazoo, Michigan, is at this time the sole and exclusive owner of all right, title and interest in and to a certain invention of one Samuel J. Dunkley, which invention is set forth and described in an Application for United States Letters Patent filed in the United States Patent Office on the twenty-ninth day of November, Nineteen Hundred and Four, and bearing Serial Number 234,715, for an improvement in MACHINE FOR PEELING

(Testimony of Robert I. Bentley.)

FRUIT and in and to all right, title and interest in [177] the Letters Patent which may issue therefor;

And whereas the CALIFORNIA FRUIT CANNERS ASSOCIATION, a corporation duly organized and existing under and by virtue of the laws of the State of California, having a regular and established place of business in the City and County of San Francisco, State of California, is desirous of acquiring the right to the use of the said invention in connection with its business for the canning and treatment of fruit.

Now, therefore, be it known that for and in consideration of the sum of Ten Dollars in hand paid by the CALIFORNIA FRUIT CANNERS ASSOCIATION unto the said DUNKLEY COMPANY, the receipt whereof is hereby acknowledged, the said DUNKLEY COMPANY does hereby grant unto the said CALIFORNIA FRUIT CANNERS ASSOCIATION for the benefit of itself and its successors a license free of royalties of any kind whatsoever for the use of said invention in connection with its business relative to the canning or treatment of Fruit, granting unto the said CALIFORNIA FRUIT CANNERS ASSOCIATION the free right for the use of any Machine or Machines or invention owned or controlled by the said DUNKLEY COMPANY, making use of lye, caustic soda or any other skin softening material for use in connection with the peeling of Fruit, or in any Machine which may be necessary for the carrying out of said invention

set forth in the aforesaid Application for Letters Patent Serial Number 234,715, the said License herein granted to be for the benefit of the said CALIFORNIA FRUIT CANNERS ASSOCIATION and its successors for the full term of years of any Letters Patent which may hereafter be granted for the invention set forth in the said Application Serial Number 234,715 now pending in the United States Patent Office. [178]

In testimony whereof the DUNKLEY COMPANY has hereunto set its signature and official seal this 22 of May, 1914, through its proper officer thereunto first duly authorized so to do by a resolution of its Board of Directors.

DUNKLEY COMPANY,
S. J. DUNKLEY, Sec.

Witnesses:

A. E. BROWN.

E. L. DAWSON."

The COURT.—What is the date of that?

Mr. LYON.—The 22d of May, 1914.

The COURT.—That was before this patent was issued?

Mr. LYON.—Before the patent was issued.

The COURT.—The patent in suit has been issued since then?

Mr. LYON.—Since then.

The COURT.—How long was this patent application pending in the patent office—it must have been about ten years, was it not—10 or 12 years?

Mr. CHAPPELL.—About ten years; we went through the course of an interference and then the

(Testimony of Robert I. Bentley.)

matter was attacked by public use proceedings and laid in that way.

The WITNESS.—I would like to make a correction about the date; I thought it was 1913; it is 1914.

The COURT.—He says the contract is dated 1913.

A. He said 1914 I understood.

Mr. LYON.—The contract here is dated May 22d, 1914; Mr. Bentley was in error of one year in regard to that.

Q. In consideration of this license which you have just produced did the California Fruit Canners Association agree to refrain from giving information in regard to the prior use of such machine and processing by the California Fruit Canners Association in 1902 and 1903? A. No.

Q. Was there no talk about that?

A. We did not agree to do [179] anything other than embodies in the agreement.

Q. Was there any understanding, gentlemen's agreement or talk about that in any manner?

A. The only talk that I had with Mr. Dunkley was this: that if he gave us a free license, naturally our interests lay with him, and we would do what we consistently could.

Q. Then you considered and do consider that the interests of the California Fruit Canners Association are with the Dunkley Company at the present time in that litigation? A. Yes.

Q. Now, in 1915 you attended various meetings of the Independent Canneries when they were considering the threat of suit by the Dunkley Company and

(Testimony of Robert I. Bentley.)

considering the defense to be used in defending such suit, did you? A. I at one time—

Mr. MILLER.—I object to that as immaterial, if your Honor please.

The COURT.—I cannot tell yet whether it is. That is merely a preliminary question. You may answer.

A. I attended no meetings of the Independent Canneries; I attended meetings at the request of the Secretary of the Canners League of which the California Fruit Cannery Association is a member at which something regarding the Dunkley matters were discussed, and I had no information on the part of other canneries as to the evidence or anything of that kind, if that is what you mean.

Mr. LYON.—Q. At those meetings this use by the California Fruit Cannery Association in 1902 and 1903 at Fresno was referred to?

The COURT.—What use is that?

Mr. LYON.—The use of the lye-treating machine and the Vernon washing-machine. [180]

The COURT.—This witness has not testified to anything of that kind. Your question assumes that he has.

Mr. LYON.—Q. Your association, the California Fruit Cannery Association, in January of this year, received a request from Mr. E. H. Kennedy of Los Angeles and Lankershim, for leave to inspect your Los Angeles plant in regard to certain measurements of machines and so forth, did it not?

Mr. MILLER.—We object to that as irrelevant,

(Testimony of Robert I. Bentley.)

immaterial and incompetent, something occurring after the commencement of this suit, in fact only a very few months ago, last January.

The COURT.—What is the purpose of this?

Mr. LYON.—I want to show in connection with the statements of the witness that they have considered that their interests were with the plaintiff in this case, they have refused all information in this connection and have refused access to their records and that they wrote letters to us to that effect, that they could give us no information or assistance whatever, and they would give none.

The COURT.—I do not see the materiality of that; he is not a party.

Mr. LYON.—It is to excuse absolutely from our standpoint the nonproduction of the officers of the California Fruit Canners Association and to show that inasmuch as their interest is with that of the plaintiff in this case, if the plaintiff wants the evidence of these parties in this case it is their duty to produce them.

The COURT.—How is that?

Mr. LYON.—Simply to explain the reasons why we do not call the officers of the California Fruit Canners Association in regard to this Vernon use, showing that they are hostile to us. [181]

The COURT.—That does not excuse anything; you cannot assume because one's interest was a certain way that he is going to come here and falsify; that is no presumption that follows, whatsoever; it is a consideration that the court may take into its

(Testimony of Robert I. Bentley.)

mind in determining whether a witness is stating the truth, that his interests are a certain way, but you cannot presume a man is going to tell a falsehood because it is against his interest. I have an idea what you want to get at, but you are not taking the proper way. Of course, I cannot advise you.

Mr. LYON.—Q. Are you familiar with the writing of Mr. T. B. Dawson?

A. Yes.

Q. I show you a letter and ask you if you know whose signature is attached to that letter?

A. That is Mr. Dawson's signature.

Mr. LYON.—We will ask that this be marked for identification at the present time Defendant's Exhibit "I."

(The letter is marked for identification Defendants' Exhibit "I.")

Mr. LYON.—That is all.

Cross-examination.

Mr. CHAPPELL.—Q. In referring to the letter of Kennedy of August 5, 1903, you mentioned if it was ever received. Have you any explanation to make in that behalf?

A. Well, when we received the subpoenas requesting us to bring a copy of a certain letter, of course, not having any of our records, I immediately took it up with our Los Angeles office, to see if they could find the original letter referred to, and the copy, but in answer to that request we received a copy of a letter which purports to have been sent to Mr. Fontana, in answer to one which had been

(Testimony of Robert I. Bentley.)

received from Mr. Kennedy; we are not able to find the letter of Mr. Fontana referred to. [182]

The COURT.—Mr. Fontana—you mean Mr. Kennedy, don't you?

A. If your Honor please, the request was to bring a letter in answer to one received from Mr. N. J. Kennedy.

Q. You could not find that?

A. I could not find the original letter, but we did find a copy of a letter which purported to have been sent to our office in answer to that letter.

Mr. CHAPPELL.—Do you think that letter had ever been received?

A. I do not believe it was ever received at our office.

Mr. CHAPPELL.—That is all.

Redirect Examination.

Mr. LYON.—Q. Did you have knowledge of the Fontana letter that you referred to?

A. I had no knowledge of the letter except I heard you read what was supposed to be the original, or a copy of the original in a deposition you were attempting to take.

Q. You are familiar with Mr. Fontana's handwriting? A. Yes.

Q. I show you a document and ask you if you know in whose handwriting it is.

A. That is Mr. Fontana's handwriting.

Mr. LYON.—We will ask that this be marked Defendants' Exhibit "J" for identification.

(Testimony of Robert I. Bentley.)

(The letter is marked for identification Defendants' Exhibit "J.")

Q. You say that you were unable in your Los Angeles office to find any record of the letter?

A. Not any record of the letter that Mr. Fontana sent to Mr. Kennedy.

Q. You say you got a copy of a letter of Mr. Kennedy by referring to your Los Angeles office. Have you that copy with you? A. No.

Q. Where is it?

A. I think it is either in our possession or the possession of the attorneys in the case. [183]

Mr. LYON.—If the attorneys for the plaintiff have that copy with them, we ask that it be produced; if not, we ask the witness to produce it here at the next session of court.

Mr. MILLER.—We object to it as immaterial, irrelevant and incompetent.

The COURT.—I cannot pass upon that until it is produced if you have it. A great many matters are required to be produced which may be irrelevant and immaterial, but when they come to offer it then your objection would be entertained and passed upon.

Mr. MILLER.—They have a copy of it themselves.

The COURT.—Have you a copy of it?

Mr. LYON.—We have a copy, but I do not know whether we are talking about the same letter; we don't know what it is.

The COURT.—I do not believe I distinctly understand this situation, and how the letter, even if the original was here, would be material. What is the situation?

Mr. MILLER.—That is what we object to; we say the letter is not material to any purpose in this case.

The COURT.—What is the proposition?

Mr. WHITE.—This is the proposition; it is alleged in the answer in this suit that Mr. Greer, of Pasadena, was one of the original and first inventors of this invention; now, in this letter of August 5, 1903, written by Mr. Kennedy, an employee—

The COURT.—Who was Mr. Kennedy?

Mr. WHITE.—An employee of the California Fruit Cannery Association at Los Angeles; Mr. Kennedy, in answer to Mr. Fontana's inquiry as to what Mr. Greer was doing that season, 1903, states in his reply to Mr. Fontana as follows, that he does not know what Mr. Greer is doing this season, 1903, but that last season [184] Mr. Greer had some sort of an arrangement whereby he was subjecting peaches to water under pressure of some 70 odd pounds to remove the skins therefrom; in other words, that letter will corroborate our contention that in 1902 Mr. Greer did conceive of this invention, and thereafter reduced it to practice.

The COURT.—Manifestly, that letter would not be admissible as against this plaintiff; that is mere hearsay.

Mr. WHITE.—That is the only way you can prove conception, by hearsay; the only way you can prove any inventor conceives invention is by calling people who will say that he told them he had made the invention, and conceived the idea, or that they heard of it.

The COURT.—If the letter mentions specifically a conception, one that can be identified, that is an entirely different thing.

Mr. WHITE.—This letter mentions specifically that in 1902 Mr. Greer was taking the skins off the peaches by the use of water under 70 odd pounds pressure.

The COURT.—How applied?

Mr. WHITE.—We do not contend that this letter on its face proves the entire conception of this invention; it simply corroborates the testimony that we will hereafter put in in regard to Mr. Greer.

The COURT.—Haven't you got Mr. Greer?

Mr. WHITE.—Yes, but this letter will corroborate his testimony.

The COURT.—But Mr. Greer's testimony isn't here yet.

Mr. WHITE.—We are simply laying the foundation for the introduction of this copy of letter hereafter.

The COURT.—You must lay a different foundation from this; you must have some evidence to which this letter will tend to corroborate. [185]

Mr. WHITE.—We will have to excuse Mr. Bentley and call him after Mr. Greer has been on the stand.

The COURT.—I am not directing the order of your proof.

Mr. WHITE.—We are simply trying to expedite matters in that way; this is anticipating the situation, of course, but we simply wanted to convenience

Mr. Bentley; we will excuse Mr. Bentley with the understanding that he will come back when we need him.

The COURT.—Of course, if the other side did not object, but the objection being made, the proper procedure must be followed in bringing out your evidence, because at this time it is clearly to my mind incompetent.

Mr. WHITE.—It goes to the order of proof, I understand your Honor's position in that matter; as I say, we wish to bring it out now because we have Mr. Bentley here; if they object, we will call him later. I will ask that Mr. Bentley be excused at this time, to come back on telephone communication from us, so that he will not have to stay in the courtroom.

The COURT.—Very well.

Mr. WHITE.—We will excuse Mr. Carr under the same arrangement. I will state that by reason of the fact that one of our witnesses is absent, we will have to digress now, and have to take up this Greer prior use, which is separate and distinct from the Vernon prior use, and in regard to that I will state this, that this defense differs from the Vernon in this respect; in regard to the Vernon prior use, we contend that was more than two years prior to the date of application of the patent in suit; in other words, proving public use more than two years prior to the date of application invalidates a patent. In this particular instance, in regard to Mr. Greer, we allege he is a prior inventor, in that he used the invention prior to the date of the Dunkley [186] ap-

(Testimony of W. H. Finley.)

plication; in other words, his use does not invalidate the patent by reason of being two years prior, but that in fact he was the original and first inventor, or conceived the invention first and reduced it to practice first, notwithstanding he did not apply for a patent on it.

Testimony of W. H. Finley, for Defendants.

W. H. FINLEY, called for the defendants, sworn.

Mr. LYON.—Q. Mr. Finley, where do you reside?

A. I reside about one mile southeast of Hawthorne, about 12 or 14 miles south of Los Angeles.

Q. California? A. California.

Q. In what business are you now engaged?

A. Building a church in Hawthorne.

Q. Then your occupation is that of a carpenter and builder?

A. Carpenter and builder; sometimes I register as a rancher.

Q. Prior to moving to Hawthorne, where did you reside?

A. Prior to moving to Hawthorne, I resided in Pasadena.

Q. Were you ever at any time acquainted with G. E. Greer, of Pasadena? A. Yes.

Q. In what business was Mr. Greer engaged at that time? A. In the fruit canning business.

Q. Under what name?

A. Pasadena Canning Company.

Q. Whereabouts was that plant located?

A. It was located on Glen Arm street.

Q. That is close to the Raymond Hotel?

(Testimony of W. H. Finley.)

A. Yes, north of the Raymond Hotel.

Q. When did you go to work for Mr. Greer there?

A. I went to work for him in April, 1903.

Q. What did you do for him there then?

A. The first work I did [187] for him was to do some carpenter work, some construction, building an addition to his plant, boiler house, in fact.

Q. How do you fix this date as April, 1903, that you went to work there?

A. Well, there are several things that help me to remember that. I had worked previous to that in Los Angeles, and I got through with the work in Los Angeles—to fix that more definitely I will probably have to go back a year; I worked for Mr. Greer and Mr. Taylor at a place called Toluca, I believe it is called Lankershim now, in a cannery; I got acquainted or knew Mr. Greer at that place—I did not get especially acquainted with him, but I knew who he was. His brother, Fred Greer, was attending to that cannery, and I got acquainted with him, so when I got through that season I went to Los Angeles and Mr. Fred Greer, being a carpenter and builder, I ran across him one day, he also being a carpenter and builder—

The COURT.—I do not see the materiality of this.

Mr. LYON.—I am trying to fix this date. It is an important date. The witness may be a little lengthy in doing it.

The COURT.—It is a matter of cross-examination. He has stated the date. That is all you have got to call out of your own witness.

(Testimony of W. H. Finley.)

Mr. LYON.—Q. What time in April was it you went to work for Mr. Greer? A. The 6th of April.

Q. Now, after the fixing up of the boiler-room and so forth, what did you do?

A. I built some tanks, I built two sets, one for himself and one for the East Side Canning Company.

Q. What kind of tanks were they?

A. They were redwood tanks; they were long and narrow, but there were six of them 8 feet long over all, two feet wide and two feet high, and two of them 7 feet long and the same width and same height.
[188]

Q. Without my having to ask you any more questions in that regard, go on ahead and tell all of the buildings that you built and used in connection with the tanks for Mr. Greer and the East Side Canning Company.

A. I built the tanks; I went purposely to build the tanks; that was the job I went to do. When I got the boiler room built, he was ready to build the tanks then; I was waiting on something—I think it was lumber—at that time, waiting for lumber for these tanks, they sent the lumber down, and while I was waiting for that I built this boiler-room, and that lasted probably a week or ten days, and then the lumber came and I went to work on the tanks; I built those to completion, and as soon as I got the tanks built I went to work to build the machinery and foundations, and things that went with the fruit washer.

(Testimony of W. H. Finley.)

Q. Proceed to tell us what you did.

A. I don't know what you want; do you want to know about the construction?

Q. The whole construction, and so forth.

A. Well, the construction of these washers first consisted of a shaker, we call it a shaker, coming from the grasshopper, where the fruit was scalded with a lye bath, was brought into this shaker, and the shaker vibrated about three inches the long way, and it was built with—the bottom of this shaker was built with slats, and they were notched or fluted so as to convey the fruit through under some sprays, three sprays that came down with pressure on to the fruit, using a Gem nozzle to spray the fruit, like they have on this garden hose.

The COURT.—You say an apparatus for cleaning fruit or peeling fruit?

A. For washing it; this spray then came on to the peaches as they went on to this shaker, and the shaker turned the fruit in [189] various positions necessary for it to come in contact with the spray; as I said before, at the bottom of the shaker the slats were notched or fluted so as to convey the fruit, and at the sides probably some three feet there was a jump-off of two inches; the idea of that was to fairly turn the fruit over to come under the rest of the sprays; there was one spray up on top of this elevated portion and two on the lower portion; the fruit went through that and dumped into one of these tanks, one of them 8 feet in length—this shaker set over a tank that was 7 feet long and it went and

(Testimony of W. H. Finley.)

flowed off into this tank which is 8 feet long and was conveyed to another tank by an endless chain, endless conveyor, I should say, that was constructed—I constructed that, with assistance—driven by two sprockets and two idle sprockets down into the bottom of the tank, conveyed it out of the water and dumped it into another tank of like construction; there were three of these, each one containing water; the construction of that was—we used Jeffries Manufacturing Company's chain, No. 34 link, and I think we had to have a regular length and an attachment alternating, and these were connected by a piece of steel or band iron, as you may call it, just to fit inside the tubs or tanks, and the ribs were fastened to the chain so that it made a continuous belt, almost meshed; then there was little pieces of angle iron riveted fast on either one of these pieces of band iron that we are speaking of, in order to engage the fruit and draw it up so that it would not stay back in the water; that conveyed the fruit out of that tub into the second tub by a like belt from the second tub to the third, and out into the common galvanized tub there and distributed it to the sorters.

Q. Now, how long were you working on that apparatus that you last [190] described, including the shaker and the arrangement of the sprays on the shaker?

A. I made two sets of them, duplicates, each one just alike; as I said, I commenced there April 6th, and I got them done before the peach season opened; I had them completed, I think, by the middle of July.

(Testimony of W. H. Finley.)

Q. What year? A. 1903.

Q. Now, after you completed them, what was done with them?

A. They were put in position and tried out and experimented on with a few peaches to see if they would work.

Q. In what places were they put?

A. At the Pasadena Canning Company's plant, Pasadena, and the East Side Canning Company in Los Angeles; I did not see that experimented with, however.

Q. Just go ahead and tell us what was done with this one that was erected at the Pasadena Canning Company plant in 1903.

A. It was put in operation, as I said, it was placed in position, the position he wanted it for economical use of the space, the caustic soda was dissolved in water, and we experimented in trying the strength of the solution in this grasshopper, and threw peaches in by two and three, in order to see how the lye bath affected them, until we got the solution to the proper strength; of course, this machine I was telling about that I constructed, was connected with the pulley, with the line shaft and set in motion, and then was carried through the shaker and we watched the process to see in what way it was acting; the first two or three we put through it was not a success, the lye was not strong enough, and we kept adding to that until we could tell it was the proper strength, the amount that it would take to do the work properly.

(Testimony of W. H. Finley.)

Q. You have referred to a grasshopper. Where was that located with respect to this apparatus?

A. I could tell you on a diagram—it was located so that it would discharge into this shaker [191] that was the position of the two.

Q. Can you describe in a general way that grasshopper, what you mean by a grasshopper in that connection?

A. That was an iron tank made kind of hopper-shape, flared at the tops, and out of the ends of that came a tube some 10 or 12 inches in diameter in which was a revolving spiral revolving screw, you might say, that revolved about 20 revolutions a minute, and that went down into the lye bath, and the peaches, when they were poured into that, were engaged by this spiral screw and carried up by this tube and discharged into the shaker.

Q. When was that apparatus, as you have last described it, first completed in its installation in the Pasadena Canning Company plant at Pasadena, California?

A. I could not state the date, but it was along in connection with the work I was doing on the tanks and the peeling apparatus.

Q. I mean when was it completely assembled?

A. Well, as I said a while ago I think about the middle of July.

Q. 1903?

A. Yes, 1903. Of course, there might have been some minor alterations made, but it was ready then

(Testimony of W. H. Finley.)

for experimental work, I am satisfied, as early as that.

Q. After it was completed, along about that time, was it after that used or dismantled?

A. It was used after that.

Q. Go ahead and tell what you know about its subsequent history?

The COURT.—As the witness has described it, I have not noticed his description of the washing apparatus, that is, I mean of the shaker.

Mr. LYON.—Q. Will you please explain that shaker process?

The COURT.—He has not said anything about a spray yet.

A. Do you want a description of the shaker, its construction?

Mr. LYON.—Yes.

A. That was made of a frame of 2 by 3 [192] boards, together with rods; the rods ran through this way and this way to give rigidity, and it was made 6 inches deep, practically—that might not be exactly 6 inches, but it is 6-inch lumber, and on top that flared out, with 6-inch boards, flaring out to keep the spray or things from flopping out; and then these racks I described, they were flared under and left space between this so that the pulp and this gelatin mass and matter would go through into this tank that I described, and the shaker was set on four springs which I constructed out of hickory; they were bolted rigid to the tank at either end, and they were bolted, fastened to the shaker, in a manner to let them work

(Testimony of W. H. Finley.)

without friction; then through this tank I constructed a crank, a center crank, and a wheel at the end of this driven by a pulley and the working of that crank engaged a pitman which was fastened to the shaker, and a little revolving would give it that motion, and that motion is what engaged these little notches, kept the fruit in motion, under the three sprays.

The COURT.—You have not described any of this before. What were the sprays? How were they arranged, and what did they consist of?

A. They consisted of Gem sprays, these common garden hose sprayers, and they came from the water main of the city with the pipe overhead, and they were led into that pipe straight down onto the rack in the shaker, and as the fruit passed by them it engaged each one of these sprays; with a little bit of experimental work on that, they found out at times that some of the fruit would get away too fast, and I put in what we called baffle plates, for a better name, just simply took some old sheet iron we had there and tacked that in between the two walls of the shaker to bring them to a point like this, to hold the fruit together, so that it would pile up and work as the spray was on [193] it, so that it would keep in a bunch there and work, so that the spray would wash the gelatin matter off, the disintegrated peeling. Right below this opening I then took one of the 2½'s, we call them 2½ cans, and fastened it to the bottom of the rack to further retard the fruit or to spread it when it got at the sides, so that the last

(Testimony of W. H. Finley.)

spray would engage all the fruit; it was thoroughly spread out from both sides of the rack again.

Mr. LYON.—Q. You say you made two of these devices, and one of them was set up in this Pasadena Canning Company's plant at Pasadena. Where did the other one go?

A. To the East Side Canning Company, in Los Angeles, California.

Q. Did you ever see that erected there?

A. I helped to erect it.

Q. I show you a photograph marked Exhibit B-1, 2, 3, 4, 5, 6, 7, 8, to the stipulation in this case, and ask you to examine the same and state if you ever saw these before and know what they are.

A. Yes, I have seen these, all of them.

Q. What are they?

A. That is the machine that I have just described; we put in the grasshopper, the washing-machine and the grasshopper, the scalding machine, the washing-machine.

Q. Do you know, Mr. Finley, where this shaker device that was used and installed in 1903 at the East Side Canning plant in Los Angeles and to which you have referred, is at the present time?

A. Do I know where it is at the present time?

Q. Yes. A. Yes.

Q. Where?

A. I saw it this morning; it was in storage up here in one of these rooms.

Mr. LYON.—We being surprised at getting this witness on the stand some minutes earlier than we

(Testimony of W. H. Finley.)

thought, we have not had [194] an opportunity to move that into the room, and it is quite heavy. Can we suspend at this time and get it in here?

The COURT.—Now, go on with the witness. You can get it in here at any time.

Mr. LYON.—Now, referring to the drawing or sketch which accompanies these photographs in this stipulation, tell us, if you know, what that drawing is, and under whose instructions it was made.

The COURT.—Which one is that?

Mr. LYON.—That is a part of the stipulation and the one that refers to this same set of photographs.

A. This drawing was drawn at my request, at my instructions, rather, and from memory.

Q. To show what?

A. To show the construction of this shaker device.

Q. Who instructed you to build these two machines to which we have been referring?

A. Mr. G. E. Greer.

Q. Who furnished the ideas in regard to the shaker and that end of the machine? A. Mr. Greer.

Q. Now, then, what do you know about these two machines, or either of them, subsequent to their being erected in position for use in July, 1903; did you see them at all after that date?

A. Yes, the one in Pasadena I operated.

Q. For how long did you operate the one in Pasadena?

A. I operated it during the season of 1903 and during the season of 1904, and I was away from there in 1905, and I operated it the season of 1906, 1907 and 1908.

(Testimony of W. H. Finley.)

Q. Any changes made on it during those years?

A. There were only changes of minor importance; I made a new shaker for the Pasadena Cannery, but it was practically just the same. [195]

Q. To what extent was this machine at the Pasadena Cannery used during the season of 1903?

A. To what extent?

Q. Yes. A. Continuously.

Q. For what purpose?

A. For washing peaches.

Q. Now, please explain to us what you observed in regard to the use of that machine in 1903 in the washing or peeling of peaches.

A. What I observed?

Q. Yes.

A. I do not hardly get the question. I observed that it peeled them.

Q. In what condition did the peaches come out of the lye solution or grasshopper?

A. They came out of there a kind of a dirty-looking mass, as you say of peel disintegrated, and much of it clinging to the peach, and the lye bath was a kind of a black dirty looking mass, and this stuff stuck to it, and when it was discharged into the shaker, of course that is the way it looked, a kind of blackish, brownish dirty-looking stuff, and one thing I remember very distinctly was the moment they struck the spray they began to clean up so, especially the White Heath peaches, it used to amaze me, the difference was so marked when they would strike the spray.

(Testimony of W. H. Finley.)

Q. Were these whole peaches?

A. They were halved peaches; they were cut in half; we did peel some whole peaches, but very few.

Q. Were they pitted, or how were they?

A. They were cut in halves and the pits taken from them.

Q. Where did the water that was used by this washer in these sprays come from in 1903 at the Pasadena Cannery? A. The city mains.

Q. Approximately, do you know what pressure you had at that time, there?

A. No, only what they told me; Mr. Greer told me, however, they had from 80 to 90 pounds pressure.

[196]

Q. I believe you said you were at work there in the year 1904, also? A. Yes.

Q. What was the supply of water to this machine and to these sprays in particular in 1904?

A. It was weak; we installed a pump.

Q. What was the purpose of installing the pump?

A. To give more pressure on these sprays, so that they would do the work effectively?

Q. Do you know anything about the pressure of the water at the East Side Cannery in Los Angeles in 1903, when they first started that machine?

A. Yes, it was weak.

Q. Do you know whether anything was done in that regard?

A. Mr. Taylor ordered a pump.

Q. What was the purpose of such pump?

A. For the same purpose, to make the pressure

(Testimony of W. H. Finley.)

sufficient to wash the disintegrated peel from the peach.

Q. Did you see that pump in place afterwards?

A. Yes, I helped install it.

Q. Is that the pump that is shown in one of these photographs?

A. Yes, I recognized that while I was looking through it awhile ago.

Q. That is in photograph B-8? A. Yes.

Q. Did you ever afterwards build any more of these machines?

A. Yes, I helped to build two more and a shaker.

Q. When? A. In 1903.

Q. Do you know where these went?

A. One went to Ontario; the shaker went to Ontario, and the two machines, one went to Pomona and one went to Anaheim.

Q. What time in 1904 did you complete them?

A. I could not [197] recall the date, but it was before the peach season opened; we had them ready to operate for the season.

Q. How did these machines compare with this Pasadena machine of the photographs B-1 to 8 that you have identified?

A. The machines are identical, with the exception of the first tub; we made this first tub, the 7-foot tub, 2 feet over all in depth and 2 feet wide, and that tank or tub was only one-half the depth; otherwise, the mechanical part of it was identical with this machine; I cannot recall any changes whatever.

Q. Do you know anything about whether any of

(Testimony of W. H. Finley.)

these machines were installed and put in operation at Pomona or Anaheim?

A. I helped to install one of them, and the other one, I gave instructions for the installing, and all I know about it is what I heard.

The COURT.—Do not tell what you heard.

Mr. LYON.—You then saw two of them installed?

A. No; I installed one and gave instructions as to the installation of the other.

Q. What one did you give the instructions as to the installation of? A. Pomona.

Q. You saw the one erected and put in condition for operation at Anaheim?

A. No; I just saw the machine part erected; I did not make any of the connections for the power, or attend to that, but I put it in the position it should be in to run.

Mr. LYON.—With the exception, your Honor, of reserving the right to recall this witness to-morrow to identify this particular shaker, as we get it down, that completes the direct examination of this witness. [198]

Cross-examination.

Mr. CHAPPELL.—Q. What became of the first machine that you made; what is the last you saw of it?

A. I made two at one time; I would not know which was first. The machine I made for the East Side Cannery and the Pasadena Cannery were carried along at the same time, so it would be hard to say.

The COURT.—Those are the two machines you say

(Testimony of W. H. Finley.)

you finished in July? A. Yes, 1903.

Mr. CHAPPELL.—Q. When did you see the Pasadena machine the last time? 1910?

A. Yes, it was in operation in 1910, the last I saw it working.

Q. Was the use of it in 1903 a public use, that is, were people going and coming as you were operating the machine?

Mr. WHITE.—That is objected to as immaterial.

The COURT.—The objection is overruled; it is cross-examination.

A. I had instructions to not let people hang around it; is that what you mean?

Mr. CHAPPELL.—Yes.

A. People came there looking over parts of the cannery, and I was told to send them to the office for a permit; however, people came in and saw it.

Q. Did you exhibit the machine to anyone during the year 1903, other than Mr. Greer?

A. What do you mean by that, please?

(The last question repeated by the reporter.)

I understand your question, but do you mean did I show it to them or did I take the initiative to show it to them?

Q. Yes, did you show the machine to anyone?

A. No, not that I recall, did I show it to any person.

Q. Did anyone know about it besides yourself?

A. I am sure the people that worked in there knew it. [199]

Q. Did they know what solution was being used with it?

(Testimony of W. H. Finley.)

A. I could not say; some of those who helped me on the machine knew that, of course.

Q. Well, they were prohibited from giving any information about it, were they not?

A. I don't know. I was.

Q. You were in charge, were you not?

A. I was in charge.

Q. What were Mr. Greer's instructions to you specifically, what did he tell you?

A. Well, I could not just call to mind; I could not just call to mind what he said in regard to that, but I think one of the remarks he made was, "Keep your eye on people going around here; this is not a public machine," or words to that effect; that would be the gist of it, however. We constructed a little partition around it, to keep the public gaze off of it.

Q. So that it was separated off from the rest of the cannery, was it?

A. Just a little partition, a front partition, not a room, but just a partition.

Q. How high up did that partition extend?

A. I would judge seven feet.

Q. So that one could see over it? A. No.

The COURT.—They did not provide step-ladders to get up and look over? A. I don't know.

Mr. CHAPPELL.—Any sign up that this was private, "Keep out"? A. I do not recall any.

Q. Simply locked up, was it?

A. It was not locked up; a person could go around and walk right around; we had a door through it, you could go right through that door; sometimes

(Testimony of W. H. Finley.)

the people who had business in the cannery could go through the door.

The COURT.—It was not shut up from access to those who were working in the cannery?

A. No, it was not shut up. [200]

Mr. CHAPPELL.—Q. Any sign up to keep visitors out of the plant generally?

A. I could not recall to mind whether there was or not.

The COURT.—You are speaking now of the East Side Cannery where you worked?

A. No, I am speaking of the Pasadena Cannery. I worked at the Pasadena Cannery.

Q. You worked in Pasadena? A. Yes.

Mr. MILLER.—It is relative to the Pasadena Cannery.

Mr. WHITE.—That is Mr. Grier's Cannery.

Mr. CHAPPELL.—Where Mr. Finley was employed.

Q. Do you remember the names of any of the employees who had access to the machine?

A. Yes; I think I could recall a few of them. Do you want me to give their names?

Q. Give the names and addresses of those that you are able to.

A. There was Gerald Waterhouse, Pasadena; I am giving you the address at that time; William Hermann; Arthur Beach; one young fellow I recall by his nickname, I can't think of his name—Shorty O'Neil, they called him; Miss Osborn; you know the names are kind of hard to recall, the names of the

(Testimony of W. H. Finley.)

whole bunch; there was a great number there.

Q. What did Mr. Grier furnish you to work from in putting these machines together in April, 1903? Did you have drawings? A. No; no drawings.

Q. How did he convey to you the information as to what he wanted?

A. I had no general drawings; he would occasionally make a sketch of some part, but he described it so minutely to me it was no trouble for me to make the machine; that was the way he generally did; he was very accurate in describing a thing, or at least I found him so, and it was not much trouble to make a thing, what he told me to make. [201]

Q. What did he tell you—he would give you a verbal description and you would make it?

A. A verbal description; some of the parts he told me what he wanted and the detail I worked out myself.

Q. What parts did you work out the detail of?

A. Now in this conveyor chain that carries the fruit from tub to tub we had to have a frame in that chain to carry the sprocket and the power—we had to have something substantially rigid in there.

The COURT.—Q. Which one are you referring to now?

A. These tubs, these conveyors here; this chain here that works up here, the lower part there.

Q. Where is that chain?

A. This piece of iron; the chain is under this.

Q. This was a sort of endless arrangement?

A. Endless arrangement.

(Testimony of W. H. Finley.)

Mr. CHAPPELL.—Q. Did you ever see the machine that is photographed in these photographs B-1 to B-8?

A. Did I ever see the machine?

Q. Did you ever see the machine of which this is a photograph?

A. Sure, I made it; that is, all except the Grass-hopper.

The COURT.—Where is this machine installed?

A. This machine that is photographed here in the East Side Canning Company, Los Angeles, California.

Mr. CHAPPELL.—Q. Did you attend when the photographs were taken? A. No. [202]

Q. Do you know when these photographs were made?

A. No, I do not; that is, I could not give the date.

The COURT.—Q. How do you identify this then as the machine in the East Side Cannery?

A. Now, this shaker here, and this piece put in here—I did not do that; that was put in there.

Q. I am not asking you about what you do not identify, but how do you identify the machine as one that you made and where it is located? Are you simply telling what somebody has told you?

A. No, I took a good look at that machine when I was down there in February.

Q. Do you know when these photographs were taken?

A. Wait a minute. January, I was down there.

Q. January of this year?

(Testimony of W. H. Finley.)

A. January of this year, along the latter part.

Q. Do you know when these photographs were taken?

A. No, I don't know when they were taken; they told me they were either going to photograph them or had photographed them, I have forgotten which, that they wanted me to identify the machine.

Q. You installed at least two of these machines, this one at the East Side and one at Riverside; they are both alike, aren't they?

A. At Pasadena—they are both just alike, their original construction.

Q. How can you tell that this is one rather than the other?

A. The other was taken out and destroyed.

Q. It is merely your deduction that these are photographs of the East Side machine?

A. Yes, you are right.

Mr. CHAPPELL.—Q. You did not personally install the machine at the East Side Cannery, did you?

A. What do you mean? I did not have charge of it. [203]

Q. I understood you to say that you gave directions but did not do the work.

The COURT.—That was with reference to the Anaheim.

A. That is the Pomona.

Q. That was one of the second two that he built, but I understood you to say that you installed both of these that you first built, one at Pasadena and the other at East Side? A. How is that?

(Testimony of W. H. Finley.)

Q. I understood you to say that you installed both of these first machines that you built?

A. That is, I say, Mr. Grier and I were the ones that installed them; I did the work.

Q. You installed them as the mechanic?

A. Yes.

Q. But the second two you built in 1904, one of which went to Pomona and one to Anaheim, you simply gave directions as to the installation of the one I believe at Pomona; you never saw that one installed?

A. No. Now, recalling that former question of your Honor, this shaker here I identify that by this construction, because the two I made just alike; I destroyed the other one, the first year we broke it, and the second year, I think it was, maybe the third, I made it different from this so it was not in existence so I identify that by the construction of the shaker.

Mr. CHAPPELL.—Q. When did you install the machine on the East Side?

The COURT.—The one that is the subject of these photographs?

Mr. CHAPPELL.—Yes.

A. I cannot recall the date but it evidently was in July of 1903.

Q. That is, you succeeded in installing both machines during the month of July, 1903, the one for Mr. Grier and the one for Taylor? [204]

A. Yes, they were both installed, both together.

Q. How long after the Grier machine was the East

(Testimony of W. H. Finley.)

Side machine installed?

A. I cannot recall which was installed first; it is very likely the Pasadena machine was installed first; I know they were going to get it because of the condition of this Grasshopper; we went down and put up the Grasshopper at the East Side Cannery at Los Angeles first, because we got the position; we turned some water into it to test it to see what it would do and it leaked all over, and so that would not do, and Mr. Grier telephoned to Pasadena to Mr. Herman to test the machine in Pasadena to see if it leaked and it did; that was the message we got back, that it leaked.

The COURT.—Q. Leaked where?

A. Around the iron; it is made of iron and it was not caulked properly and it leaked all around where it was rivited.

Q. You mean the Grasshopper?

A. Yes, it was not properly constructed; so they had to get some men to come from the Baker Iron Works to caulk it, to make it hold water.

Mr. CHAPPELL.—Q. Who gave you instructions about the quantity of caustic soda to use?

A. Mr. Grier.

Q. How much did you have to experiment with that before you got the right strength?

A. Very little; we commenced at a low solution and kept increasing it in strength until we got the proper amount.

Q. And he told you the low point, I suppose, and then you added to it; is that right?

(Testimony of W. H. Finley.)

A. That is the idea; he said, I think he told me to get a couple of buckets of the solution and pour it in, and we tried that and then put in another one and another one until we got it to the proper strength.

Q. He mixed the solution, did he—you did not?

A. It was not any mixture, just simply pouring of water into [205] the caustic soda, and taking a drum and pouring the water into that; I cannot recall who mixed that; there probably was some there; we had some from the year before.

Q. Did you know about the strength of it?

A. No, I had nothing to measure the strength of it; I simply knew whenever it was strong enough to do the work we used it for.

Q. Is that the way you always used it?

A. No, we changed; we got to using caustic soda in lumps after that and found it better—not better but easier to handle; I took it up in chunks and put it into the Grasshopper and tanks and let the water in there dissolve it; it dissolves very rapidly in hot water.

The COURT.—Q. You are a carpenter, Mr. Finley? A. Yes.

Q. How did it happen to occur to Mr. Grier to employ you in the more or less technical proposition of an entirely different field of labor?

A. Well, I suppose he found I was handy at that business; I was always very handy at machinery, with engines and pumps.

Q. Mixing caustic solution is not handling ma-

(Testimony of W. H. Finley.)

chiner; that is what I ask.

A. He got me there to work; he never told me why; when I got the machine set he says, he always called me Finley, "Finley, I want you to operate this machine, I want you to do it right; if you need a man I will give you a man or two men; just see that it is done all right"; that was all at the beginning of the work.

Mr. CHAPPELL.—Q. Did you ever see any other machines than these that you made?

A. These peeling machines?

Q. Yes.

A. I don't recall any machines; I have seen work done by hand the year before.

Q. You never saw any machines except the machines you yourself [206] did the work on; is that right? A. That is right.

Q. Did you ever visit any other canning plants?

A. Yes, I have been in other canning plants.

Q. Where?

The COURT.—How did they do the work?

A. I did not visit them when they were working; I went down to the Associated Cannery in Los Angeles to put a label machine in operation; they had one there on test and it would not work and I went down to make it work; I was familiar with that machine.

Mr. CHAPPELL.—Q. What kind of a machine was that?

A. A label machine, to paste labels on the cans.

Q. Did you ever visit the California Fruit Can-

(Testimony of W. H. Finley.)

ners Association plant in Los Angeles?

A. That is the plant I am just speaking of.

Q. Did you see any lye-peeling apparatus there?

A. No; that was after the peach season as we call it, was over; they were labeling the cans then.

Q. What year was that?

A. I don't recall that.

Q. Was it after you had made these peeling-machines?

A. Yes, it was very probably 1904; I rather think it was, but I would not be sure on that.

Q. Did you know Mr. Kennedy?

A. Mr. Hugh Kennedy?

Q. I don't know what his first name is?

A. I know two Kennedys; that would answer the question.

Mr. LYON.—Q. E. H. and C. L. Kennedy—E. H. is Hugh Kennedy?

A. Yes, I know both of them.

Mr. CHAPPELL.—Q. Where did you make his acquaintance, that is, E. H. Kennedy?

A. In 1903 in Pasadena.

Q. Please explain how you came to get acquainted with him.

A. I was introduced to him by someone there, Mr. Grier I think, maybe Mr. Herman; I could not call it to mind who it was [207] at that time; I believe he was at that time connected in some way with the Associated Canneries, or the California Canneries Association.

Q. The California Fruit Canners Association?

(Testimony of W. H. Finley.)

A. Yes, the California Fruit Canners Association.

Q. He was a competitor of Griers, was he not?

A. Yes; I guess that is what you would call it.

Q. (By the COURT.) Was Mr. Kennedy there while this apparatus that you installed was in operation? A. At the cannery?

Q. Yes.

A. Yes, he was at the cannery while that was in operation.

Q. Was he permitted to see it?

A. I don't know; I cannot recall him ever having been around the machine at all.

Q. How did you happen to meet him?

A. I met him in the office this time, while I was sitting in the office.

Q. He did not come in where you were running this apparatus?

A. No, the machine at the time I first met him was not running; I was thinking it was one Sunday.

Q. They do not work on Sundays in Southern California, do they?

A. We never did; we never run canneries; sometimes we would have to repair broken machinery once in awhile, and we will do that—only of necessity however.

The COURT.—Is that all with the witness?

Mr. CHAPPELL.—Q. How perfectly were these peaches peeled by this machine when you first installed it and operated it?

A. I would call it perfect.

Q. Any lye left on any of them that you noticed?

(Testimony of W. H. Finley.)

A. I could not detect any lye on any of them.

Q. How rapidly did the machine operate?

A. Well, I would judge we would run the machine about 60 per cent of the time and peel 20 to 25 tons of fruit in ten hours. [208]

Q. Did Mr. Grier describe the step in the shaker to you when he first laid it out to you? A. Yes.

Q. He also described the little serrations to take hold of the peaches, did he?

A. You mean described the construction of them?

Q. Yes, the construction of them.

A. I cannot call to mind that he did, but I remember talking about that and we were talking about the distance they should be put apart from one to the other; we decided that they should be less than the throw of the shaker, so that the throw would carry the peach from one to the other, and with a little margin left for the friction.

Q. Did he make any sketch of that for you?

A. No.

Q. Did she show you any model to explain the thing?

A. No model; he very often came to me, and he would just take his pencil and upon anything draw a little part of it, sometimes do that; I do not recall his having done it on this particular occasion, but he often did. As I said a while ago his descriptions were so accurate for me that I never had any difficulty in constructing anything that he put me at.

Q. When was the Pasadena machine taken out, if you know?

(Testimony of W. H. Finley.)

A. I don't know; I was not there when it was taken out.

Q. The last time you saw it was when?

A. It was 1910, if I remember right, I think that was the date.

Q. What was the occasion of your seeing it that time?

A. I went out to Pasadena on a visit; I went out there and called down to see Mr. Grier on a visit, and he asked me around and showed me some improvements he had made and so forth.

Q. Any improvements on the peeling-machine?

A. No, he made no improvements on that; he had torn out some of the conveyors I had put in and installed a new system away [209] from the machine that had no connection whatever with the machine, a sorting-machine, I think he called it.

Q. Was the 7-foot partition still there excluding the public?

A. No, he took that out; I don't think it lasted the season, if I remember rightly.

The COURT.—Q. You say you have never seen any of these machines in operation or heard of any except those you built?

A. I heard of them, yes, but never saw any.

Q. You never saw any?

A. Except those I built.

Q. No others in use down there?

A. Yes, they all used them—some kind of a machine I was told.

Q. I am not talking about the same kind, I am

(Testimony of W. H. Finley.)

talking about this character of apparatus.

A. None that I know of; none of the Grier machines were in use there except those that I have described, unless they have made them of their own hook.

Q. You were familiar with the old-style method of handling peaches for canning, were you not, by hand?

A. Slightly; I worked one year in a cannery before this machine was built, as I said awhile ago at Toluca, now called Lankershim.

Q. Didn't the introduction of a method of this kind excite attention as being revolutionary, a great advance in the art?

A. Well, Grier seemed to think it was a great thing; he confided to me that he had something worth while.

Mr. CHAPPELL.—Q. Did Mr. Grier say he was applying for a patent on the thing?

A. I do not recall any such conversation.

The COURT.—Q. In what connection did he ask you to exclude people from the outside getting an opportunity to view it; did he say he wanted to withhold knowledge of it until he [210] had opportunity to apply for a patent?

A. I do not recall just his reason for that; I inferred however at the time that was it; but I do not recall his ever having applied for a patent. I will just recite an instance; a party came up one time and walked right up to the machine; I went to them and asked them, "Did you get permission from the

(Testimony of W. H. Finley.)

office to come in here," and they said, "No," and I said, "You have got to get permission from the office," and they kind of sauntered off a little ways, and so I went to the office and told Mr. Grier about it and said, "Did you send them in, are they friends of yours," and he said "No; send them out, if they bother you"; he said, "I do not want anybody nosing around"; that is the remark he made at that time.

Mr. CHAPPELL.—Q. You mentioned something about a machine at Toluca. What was there about that?

Mr. LYON.—That is objected to upon the ground it is a misstatement of the witness' testimony. He did not mention anything about a machine at Toluca.

Mr. MILLER.—Just let him state what it was.

The COURT.—This is cross-examination and they have a right to put words in the witness' mouth if they want to.

Mr. MILLER.—Q. Just state what that was about Toluca; you said something about Toluca?

A. It might have been a machine; as I recall it there were a couple of tanks, and they had a dipper like that (illustrating) and put the peaches into that and dropped it down into one tank of this caustic soda and a rope came from a pulley and a man would pull that up and that would raise up and pour the fruit into the other tank. They called it a prune-dipper.

Mr. CHAPPELL.—We may have some further questions to ask after we know more about the mat-

ter from Mr. Grier. [211]

Mr. MILLER.—We will ask that this witness be retained until Mr. Grier has been on the stand; we probably will have to recall him. We understand that Mr. Grier is to be a witness.

The COURT.—Is Mr. Grier here?

Mr. LYON.—Mr. Grier is here. We will have to recall him the first thing in the morning as soon as that shaker is brought in anyway.

The COURT.—We will take an adjournment now.

(An adjournment was here taken until to-morrow, Thursday, March 30, 1916, at 10 A. M.)

[Endorsed]: Filed Oct. 10, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [212]

In the District Court of the United States for the Northern District of California, Second Division.

Before Hon. W. C. VAN FLEET, Judge.

IN EQUITY—No. 201.

DUNKLEY COMPANY,

Plaintiff,

vs.

CENTRAL CALIFORNIA CANNERIES,
Defendant.

Proceedings Had Thursday, March 30, 1916.

Thursday, March 30, 1916.

Counsel Appearing:

For the Plaintiff: FREDERICK L. CHAPPELL,
Esq., JOHN H. MILLER, Esq.

For the Defendants: FREDERICK S. LYON, Esq.,
WILLIAM K. WHITE, Esq., KEMPER B.
CAMPBELL, Esq.

W. H. FINLEY, direct examination resumed:

Mr. LYON.—Q. Mr. Finley, you stated that at the first trial of the Grasshopper both at the East Side Canning Company and at the Pasadena Canning Company they were found to leak; do you remember the circumstances in regard to their subsequent caulking?

The COURT.—What is the materiality of this? You have gone over it once.

Mr. LYON.—It was brought out on cross-examination.

The COURT.—What of it? What is the materiality of it? It was a mere incidental thing that he mentioned as being incident to his work there.

[213]

Mr. LYON.—Q. You have referred, Mr. Finley, to the shaker portion of this East Side Canning Company machine and I ask you if you can point that out to us at the present time.

A. Yes.

Q. Where is it?

A. Sitting over here to the right.

Q. Will you please step over and point out to the

(Testimony of W. H. Finley.)

Court by what means you can identify this as the particular device which you made as you say in 1903 and installed at the East Side Canning Company in Los Angeles prior to the last of July, 1903.

A. The general construction and the peculiar manner in which it was made. One thing is very noticeable about it, in making tanks of this kind, we get lumber that is full width redwood lumber, but in this instance we could not get it, so we had to make them up out of 2 by 12 material instead of 24 inch material—I plowed a groove in each one of these with a plow plane, and put a tongue into it of sugar pine; I made this shaker; however, there is some small work on it I did not do, like this; I did not do that.

Q. That baffle, you mean?

A. Yes; I did not put that in, nor did I put in this.

The COURT.—Do not say you did not put in this, describe what it is.

A. Here is an incline plane that sets immediately underneath the discharge from the Grasshopper; I did not put that in; these baffles on this lower section I did not put in.

Mr. LYON.—Q. Now, you have referred to a certain spray-pipe; are they here?

A. They are here; they set right here.

Q. Show us how they were arranged by you on this machine in July, 1903?

A. I assisted, I was assistant in this work; another gentleman had supervision of this work.

Q. Who was that?

A. Mr. G. E. Grier, one other person came down to do that; I could not call his name; I think I know

(Testimony of W. H. Finley.)

who [214] he is but I would not be positive; the position of these sprays was about as I am holding them, the water came in through here, was piped up from the main and connected with the pipe at this point; originally the pipe extended on out to these three tanks that I have described yesterday; I called them tubs; they are properly tanks, that had these conveyers in them. Each one of these originally had a spray the same as this, and as the fruit came under the water, to wash the fruit, these sprays are adjustable, they could be adjusted to a stream that will radiate or to a fine point; we always made the stream flare out, so that all the fruit would pass under it; these valves here we could shut them off; sometimes they choked up, and we could shut that off and take that nozzle off and open it again; the pump set over on this side; before the thing was put in operation, we put in a pump for pressure into this pipe.

Q. You referred Mr. Finley to a Gem Nozzle. What do you mean by a Gem Nozzle?

A. This was the Gem Nozzle, this brass fixture which was on here.

Q. Now, on the Pasadena machine installation in 1903 what kind of nozzles did you use?

A. Gem Nozzles.

Q. How were these sprays arranged in that machine in comparison with the explanation which you have just made in regard to this East Side machine?

A. Practically just the same; if there was any difference at all it was not material; the positions were placed before we put the pipe in; we made both at the same time; we assisted in that work; we had a

(Testimony of W. H. Finley.)

man there to do the pipe fitting.

Mr. LYON.—We offer in evidence this device including the spray-pipe and shaker and ask that it be marked Defendants' Exhibit "K."

(The device is marked Defendants' Exhibit "K.")
[215]

The COURT.—Q. This apparatus was the one that was installed where?

A. At the East Side Canning Company, Los Angeles.

Cross-examination.

Mr. CHAPPELL.—Q. Just what date did you install it there; when was the installation complete?

A. A short while before the peach season began that year, the date I would not know, but between the middle of July and the last of July.

Q. It was not as early as July 15 then?

A. It might have been, I would not say; I know that because I was making some other machinery and so we had to hurry up to go and install this machine, we got a little belated on this machine and we had to hurry up to install the machine.

Q. I think you stated yesterday that this was exceptional business for you, that you were not making machinery; what other machinery were you making?

A. I was making a slicing-machine for slicing peaches.

Q. When did you get into that?

A. At the same place, along at the same time; after I got these two machines, as one would say, well out of the way, I made a slicing-machine.

Q. To whom did you furnish the slicing-machine?

(Testimony of W. H. Finley.)

A. It was made for the Pasadena Canning Company.

Q. That was made for slicing what?

A. Peaches, halves; when the peaches were cut in half and peeled they were sliced in slices, to be canned in that way.

Q. Was that slicer to slice peaches before or after they went through this spraying machine?

A. After; they were choice fruit, selected after they went through, assorted out by experts in that business and taken over to this machine to be sliced after they were all ready for the can. [216]

Q. That is extra fine-looking peaches, they sliced them up afterwards; is that it?

A. A certain amount, not all of them. As many as they thought they would need.

The COURT.—What do you mean by slicing, cutting them into strips or what?

A. Yes, the peaches on this machine are laid with the hollow side down after the peach had been cleaned and they ran them through a machine that cut them—at one time it was six slices, lengthwise.

Q. They had already been halved and pitted before they went through the process? A. Yes.

Mr. CHAPPELL.—Q. How long after you installed that machine at Pasadena and had these preliminary tests before the machine was running full capacity?

A. I don't know; it was a short while because when the peaches begin to get ripe they ripen up pretty rapidly and you can't have much delay.

(Testimony of W. H. Finley.)

Q. You had charge of the machine during that period, did you?

A. What period do you mean?

Q. From the time you installed it on through that peach-packing season of 1903? A. Yes.

Q. If anybody would know about this you would be likely to know it, would you not?

A. I certainly would.

Q. What is your best recollection,—how long was it after you tested the machine before you had it running full capacity?

A. Well, I could not say on that; it might have been a week; it might have been two weeks.

Q. Do you know from what sources the peaches were obtained on which the tests were made?

A. No, I don't know from what source.

Q. Did there seem to be an abundance of them or was there just a few of them?

A. Answering your first question, there was one order came from the Model Grocery Store; they sent and got, [217] I think, three boxes, but where they came from—they got them from the local store there, but where they came from I don't know outside of from that store.

Q. It was before the peaches were in condition to can there at Pasadena, the local product generally?

A. Yes, I infer it was; of course there were some early peaches that bring a higher price in the market, and they do not can, they wait until the general crop comes before they begin canning.

Q. Now then, the question I asked you: How long was it before this general crop that you made your

(Testimony of W. H. Finley.)

tests to know that the machine was right?

A. I don't know; it was not a very long time.

Q. You do not remember about that?

A. I do not remember about that; I did not pay any attention to that; that did not concern me, and I did not pay any attention to it.

Q. If the crop came along about the middle of August it might have been the first of August that you made this test; is that right?

A. It might have been.

Q. Your recollection is in no way clear that was during the month of July? It might have been early in August; that is right?

A. It might have been early in August; it might have been in the middle of July or later; I am not clear on that because I paid no attention to that at all. My interest lay in seeing the machine do the work; that was what I was interested in; I had a pride in the machine, having made it, and naturally would have a pride in seeing it do the work properly.

Q. Do you know Mr. H. A. Beekhuis?

A. I can't remember any such name.

Q. You never heard of him?

A. The name sounds familiar, but I cannot recall ever having made his acquaintance. [218]

The COURT.—Perhaps if you were to tell the witness how the name is spelled he might recognize it?

Mr. CHAPPELL.—It is spelled B-e-e-k-h-u-i-s?

A. I cannot at this time recall that name now; there are many people I knew.

Q. He resided at Hanford, I believe, California?

(Testimony of W. H. Finley.)

A. I knew one man that resided in Hanford but I do not recall his name; he bought fruit from Mr. Grier.

Q. Did you ever go to Hanford? A. Never did.

Q. Did you ever go to Fresno?

A. I never was at Fresno.

Q. Ever go through the plant of the California Fruit Canners Association at Los Angeles?

A. Not to go through it, no I was not through the processing-room at all. I went there, as I stated yesterday, to overhaul and repair or put the labelling machine in operation, but I did not go through the plant; they were not running at that time; they were labelling out fruit.

Q. What year so near as you remember were you in that plant?

A. Just from the general conditions it might have been the last of 1903 or first of 1904; I think it was along close to the last of the year or the first of the year of those two years mentioned, but I am not positive on that.

Q. You were—never were in that plant after that?

A. Never was in there afterwards.

Q. You never saw the machine that was made by Beekhuis for the California Fruit Canners Association that had the stepped arrangement?

A. I never did.

Q. You were never informed that Mr. Beekhuis had taken a patent on such a structure; is that right?

A. I cannot recall any such information ever being given me. [219]

Testimony of J. R. Lusby, for Defendant.

J. R. LUSBY, called for the defendant, sworn.

Mr. CAMPBELL.—Q. State your name, age, residence and occupation, Mr. Lusby?

A. 63 years of age; residence, Pasadena.

Q. Your occupation?

A. Occupation, bookkeeper.

Q. How long have you been engaged in that occupation? A. For twenty-odd years.

Q. You were engaged in that occupation in the years 1902 and 1903? A. I was.

Q. In whose employ?

A. The Pasadena Canning Company.

Q. The Pasadena Canning Company was a corporation or a partnership? A. A corporation.

Q. Who was the manager of that company at the time you were employed there?

A. G. E. Grier.

Q. Were you engaged there as a bookkeeper during the entire years of 1902 and 1903?

A. I was from May 1, 1902, to June 20th, 1903, and I practically was the bookkeeper from June 20 until September 29th, 1903.

Q. Did you have charge of all the books of the Pasadena Canning Company between May 1, 1902 and June 20, 1903? A. Yes.

Q. That includes what books?

A. It included the cash-book, the journal, the ledger.

Q. From June 20, 1903, until September 29, 1903, over what books did you have control?

(Testimony of J. R. Lusby.)

A. I simply posted from the journal and cash-book to the ledger.

Q. Who kept the cash-book and journal after June 20, 1902, to September 29, 1903?

A. Mr. E. L. Toon.

Q. Are you familiar with his handwriting?

A. Yes.

Q. Where is Mr. Toon now? A. He is dead.

Q. Who kept the books of the Pasadena Canning Company after September 29, 1903, the ledger?

A. After September 29? [220]

The COURT.—Q. 1903?

A. That was after my time; the last transaction of mine was September 29.

Mr. CAMPBELL.—Q. After you left there who kept the books, if you know?

A. I do not remember the party's name.

Q. At the time you left Mr. Toon was keeping the journal and cash-book? A. Yes.

Q. I show you this book Mr. Lusby,—what book is that, if you know? A. That is the journal.

Q. The journal to which you referred?

A. From May 1, 1902, to June 20, 1903.

The COURT.—Q. The journal of the Pasadena Canning Company? A. Yes.

Mr. CAMPBELL.—Q. State whether or not you made all of the entries in that book during that period of time. A. I did.

Mr. CAMPBELL.—I ask that this be marked for the purpose of identification merely as Defendants' Exhibit "L."

(Testimony of J. R. Lusby.)

(The book is marked for identification "Defendants' Exhibit "L.")

Q. I show you this book Mr. Lusby; what book is that? A. That is the cash-book.

Q. Of the Pasadena Canning Company?

A. Yes.

Q. State whether or not you made all of the entries in that book between May 1, 1902 and June 20, 1903.

A. Yes.

Q. With reference to the journal and cash-book to which you have referred state whether or not you copied these entries into any other book during that period of time?

A. Between May 1 and June 20?

Q. Yes.

A. I transferred them from the journal to the ledger.

Q. And from the cash-book?

A. And from the cash-book also to the ledger.

Mr. CAMPBELL.—I will ask that this book referred to by the [221] witness—the cash-book, be marked for identification as Defendants' Exhibit "M."

(The cash-book is marked for identification Defendants' Exhibit "M.")

Q. I show you this book; what book is that?

A. The ledger of the Pasadena Canning Company.

Q. Was that book used during the period of time to which you have just testified, May 1, 1902, to June 20, 1903? A. Yes.

Q. Is that the book to which you referred, as having transferred and copied the entries from the cash-

(Testimony of J. R. Lusby.)

book and journal? A. Yes.

Q. Under whose direction were those entries made?

A. The blotter from which I transferred to the journal was largely under Mr. Grier; he made the blotter entries.

The COURT.—Q. What is the blotter?

A. The day-book, the original entry.

Q. You never kept the blotter?

A. Yes, I did, from May to June, 1902 and 1903, on the fruit received.

Q. You have not mentioned it as one of the books you kept?

A. But the principal entries were made by Mr. Grier himself, in that book.

Mr. CAMPBELL.—Q. That is the entry of the memoranda?

A. Yes.

Mr. CAMPBELL.—I ask to have this book referred to by the witness as Pasadena Canning Company's ledger as Defendants' Exhibit "N."

(The ledger is marked Defendants' Exhibit "N.")

Q. Now, the entries in the cash-book and journal to which you have referred were made at what period of time, compared with the time of the transactions to which they relate?

A. Within a day or two after the transactions.

Q. And the copies made of these entries from the cash-book and [222] journal into the ledger were made at what period of time with respect to such entries? A. At the same time, two of them.

(Testimony of J. R. Lusby.)

The COURT.—Q. You mean made in the ordinary course of business?

A. Yes.

Mr. CAMPBELL.—Q. And these entries, all the entries you have testified to, are true and correct?

A. Yes.

Q. And all entries made under the direction of Mr. Grier, the manager of the company? A. Yes.

Q. Now, I direct your special attention, Mr. Lusby, to page 6 of the journal, an item under date of August 1, East Side Canning Company; will you read that item?

Mr. MILLER.—We object to it as immaterial, irrelevant and incompetent, not the proper way to go about it.

The COURT.—Let the other party see what you are offering.

Mr. MILLER.—The books are not offered in evidence yet.

The COURT.—You cannot read from the books unless you take the proper course.

Mr. MILLER.—Our objection is no foundation has been laid for the introduction.

The COURT.—When you see the item it may be in your favor, and you will admit it.

Mr. MILLER.—We do not see any relevancy to the items, and object to the examination of them until the proper foundation is laid.

Mr. CAMPBELL.—The purpose of these questions is merely to lay the foundation for the future introduction of these items by Mr. Grier; this is merely to authenticate the data.

(Testimony of J. R. Lusby.)

The COURT.—You are not asking him to read what is in the item now, but just simply to examine it?

Mr. CAMPBELL.—I have asked him to read the item.

The COURT.—You cannot get it into the record until the [223] proper foundation is laid.

Mr. CAMPBELL.—We now offer in evidence the books heretofore referred to as Defendants' Exhibits "L," "M," and "N" for identification.

The COURT.—They have been offered for identification.

Mr. CAMPBELL.—They were so referred to; we now offer them in evidence.

Mr. MILLER.—We object to them upon the ground that the proper foundation has not been laid for the introduction of the books.

The COURT.—What is the relevancy of them?

Mr. MILLER.—We object on the ground that no proper foundation has been laid for the introduction of the books, and that they are irrelevant.

The COURT.—In what respect?

Mr. MILLER.—They have not followed it up by the man who kept this book, or where the books have been or where he last saw it, or whose possession it comes from, or anything of that kind has not been shown.

The COURT.—You mean they have not avoided possible sophistication?

Mr. MILLER.—Before he can bring his book and offer it in evidence we think he must first prove who

(Testimony of J. R. Lusby.)

kept the books?

The COURT.—The witness has testified he kept the books.

Mr. MILLER.—The witness has testified he kept the books—this is in your handwriting?

The WITNESS.—Yes.

The COURT.—He says all of it is in his handwriting.

Mr. MILLER.—Then they must prove afterwards where this book has been during all of this 10 or 14 years since it was kept, in whose possession and all that matter, in order to prove [224] that there is no continuity in the thing, and then they must prove these matters are relevant.

The COURT.—The question of relevancy I would have to see by knowing what the relevancy is, but you may ask him where these books had been kept and where they are produced from.

Mr. MILLER.—Q. Mr. Lusby, where have these books been since these entries were made, in whose possession?

A. In Mr. Grier's.

Q. How do you know that?

A. I know when they left there they were in his possession, in his safe.

Q. When did you leave there?

A. I left there in September,—the last dealings I had with the books were in September, 1903.

Q. You had nothing to do with the books after that? A. Not after that date.

Q. You left them there in the safe, you say?

(Testimony of J. R. Lusby.)

A. Yes, in Mr. Grier's possession.

The COURT.—Q. Do you know where they have been produced from now? A. I could not say.

Q. Thirteen years is quite a long time for books to be floating around; they might have been over engaged in the European War since then?

A. I know nothing of them since the time I left on September 29, 1903.

The COURT.—Show from whose possession these books come, so that it will appear whether or not—

Mr. CAMPBELL.—We will have to withdraw this witness temporarily, your Honor.

Mr. LYON.—We will call Mr. Grier for that purpose alone at this time.

Testimony of George E. Grier, for Defendants.

GEORGE E. GRIER, called for the defendants, sworn.

Mr. LYON.—Q. Where do you reside, Mr. Grier?
[225] A. 1601 Maringo Avenue, South Pasadena.

Q. In what business were you engaged in in 1902, 1903, and 1904? A. Canning business.

Q. In connection with what concern?

A. The Pasadena Canning Company.

Q. Did that company keep books of account covering its business during that time? A. Yes.

Q. I show you four books, and ask you if you have ever seen them before, they are the books marked for identification Defendants' Exhibits "L," "M" and "N"? A. Yes.

(Testimony of George E. Grier.)

Q. Do you know where these books have been since 1902 and 1903?

A. Our Office at Pasadena, Pasadena Canning Company.

Q. And are produced here for use in this case?

A. Yes.

Q. I show you another book and ask you if you know what that is? A. Yes, this is a ledger.

Mr. LYON.—I ask that that be marked for identification. That is all at the present time. We offer these books in evidence.

Mr. MILLER.—I want to ask Mr. Grier some questions:

Q. Mr. Grier, what is the name of this first book, Exhibit "L" that was handed to you?

A. That is the journal.

Q. But for what company?

A. The Pasadena Canning Company.

Q. Is the name Pasadena Canning Company on the book?

A. I don't know as it is.

Q. Look at it and see and then you can state?

A. I do not think it is.

Q. Is there any name on the back of the book?

A. No.

Q. Was not there a name on the back of the book once?

A. Not that I know of; I don't know that.

Q. Hasn't something been torn off of it?

A. Not to my knowledge. [226]

Q. The book simply commences "Pasadena, Cali-

(Testimony of George E. Grier.)

fornia, May 1, 1902, 8th: expenses \$9.00"; that is the way it commences, without any name, anybody at all?

A. We carried the account over.

Q. Whose handwriting is that?

A. That is Mr. Lusby's. J. R. Lusby's; he kept the books for us at that time.

Q. Now, the next book that was offered here is marked Exhibit "M" for identification, what name is there in the book to show whose book that was?

A. It is very evident that this is the Pasadena Canning Company.

Q. What name is there in the book to show it is the Pasadena Canning Company's book?

A. Well, to me it would need no name.

Q. I am asking you the question what name there is in the book? A. I do not know that there is any.

Q. That is like the other book, isn't it, in regard to the name? A. Yes.

Q. Now, look at the next one, Exhibit "N" and state whether or not there is anything there?

The COURT.—There is one of these books marked "L."

The CLERK.—"L" is the journal, "M" is the cash-book, and then there were two ledgers "M" and "O."

The COURT.—There is only one ledger that has been offered in evidence; the other is merely for identification.

The COURT.—They are all four marked the same way so far, all marked for identification so far.

Mr. MILLER.—Q. Now, look at this book marked

(Testimony of George E. Grier.)

Exhibit "N," purporting to be a ledger; is the name of any company on that book, which shows what company the book belongs to and by whom the book was kept?

A. The fact of the case is that the Pasadena Canning Company was a partnership, that the partnership [227] was composed of myself and Mr. E. A. Taylor.

Q. Now, Mr. Grier, will you please answer my questions and not volunteer information?

A. No, there is nothing in here to show the Pasadena Canning Company.

The COURT.—Q. The name Pasadena Canning Company was a mere trade name?

A. Trade name; yes.

Mr. MILLER.—But the witness who was last on the stand testified that it was a corporation; he was not correct about that then, was he? A. No.

Q. He said he kept this book for a corporation called the Pasadena Canning Company; that was not correct?

A. That was not correct, at the start of this; the Pasadena Canning Company is mentioned in this book.

Q. There is an account in that book against the Pasadena Canning Company just as there is an account against other people? A. Yes.

Q. This other ledger which was put in evidence here, marked Exhibit "O," that stands on the same footing as the others, I suppose?

A. It shows the incorporation.

(Testimony of George E. Grier.)

Q. In 1905? A. Yes, and it is in this book.

Q. What is in that book?

A. It shows the incorporation.

Q. The articles of incorporation?

A. No, not the articles.

The COURT.—Q. You mean an entry?

A. A reference.

Q. You can identify these books can you as books kept during the period they purport to relate to by the partnership carried on under the name of the Pasadena Canning Company? A. Yes.

Mr. MILLER.—We have no other questions.

Mr. LYON.—That is all for the present, Mr. Grier. We renew the offer. [228]

Mr. MILLER.—I think, your Honor, the evidence is sufficient to admit the books upon the technical objection that was heretofore made. We object, of course, to the individual entries there as being irrelevant.

The COURT.—I have not seen what the entry is that they are calling attention to. Let them ask the witness again and then I will pass on that.

Testimony of J. R. Lusby, for Defendants (Recalled).

J. R. LUSBY, direct examination, resumed.

Mr. CAMPBELL.—Q. I call your attention, Mr. Lusby, to an entry on page 6 of the journal, Exhibit "L," which I will read to you and ask you if you made that, under date of August 1, 1902: "Supplies, \$31.05; East Side Caning Company, \$31.05." Did you make that entry? A. Yes, I did.

Mr. MILLER.—We object to that as immaterial, irrelevant and incompetent; I do not see that it has any bearing on this case.

The COURT.—I cannot see, myself, at this time, unless you can explain what the purpose is.

Mr. CAMPBELL.—We expect to connect that up by the ledger entry to which this was transferred, showing that this was the purchase of some caustic soda; of course, we will show later that that caustic soda was used in the experiments and in connection with the building of this machine or construction of this machine which is in litigation here. It is all corroborative of the manufacture and construction and building of this machine taking place in the year 1902.

The COURT.—It would seem diaphanous evidence for the deduction that the machine was made by the purchase of caustic soda. [229]

Mr. CAMPBELL.—Of course, we cannot produce the witnesses all at once, and we expect to connect this testimony up with the testimony that is to follow.

The COURT.—I will let it go in.

Mr. LYON.—If we do not connect it up it will be considered as rejected and stricken out.

Mr. MILLER.—We have another objection. This is not the book of original entry; these are entries in a second book which were transferred from another book, the blotter that he refers to.

The COURT.—He testified these books were kept in the usual and ordinary course of business.

(Testimony of J. R. Lusby.)

Mr. MILLER.—Yes, these books were kept in the ordinary course of business, but the ordinary course of business was to make an entry in the original book of entry.

The COURT.—Is this the original book of entry?

A. No, that is the blotter.

Q. Where is the blotter.

A. I believe that was lost.

The COURT.—You will have to show that the blotter cannot be produced before I can let this go in, if this is not the original entry; I supposed it was.

Mr. CAMPBELL.—I understand the rule to be that where entries are practically contemporaneous, copied from one book into the other, that they are all considered original entries, and we have laid that foundation by making the showing—

The COURT.—You have not shown that they were ever copied into this book from another one. You have not examined him as to the course of business at all in the keeping of the books.

Mr. CAMPBELL.—It was my impression that we had done so. [230]

Mr. CAMPBELL.—Q. I will ask you what was your course of conduct in keeping these books; where did you get the items which went into the cash-book and into the journal?

A. The journal information came from the original book, the blotter or day-book, we called, which was largely made up, the entries, by Mr. Grier.

Q. Did you get all the items from this blotter?

A. Yes.

(Testimony of J. R. Lusby.)

Q. They were copied from the blotter in the usual course of business on the journal? A. Yes.

Q. At what period of time compared to the entry upon the blotter were the entries transferred to the journal or the cash-book?

A. Within a few days after the transaction.

Q. And that applied to all the entries to which you have just testified that you made both in the journal and the cash-book? A. Yes.

Q. Now, I would ask you again, Mr. Lusby, whether or not you made the entry to which I have directed your attention, the one under date of August 1, 1902?

The COURT.—He said he made that. It is not necessary to ask that again, because he said he did. I will let it go in.

Mr. CAMPBELL.—I offer that in evidence.

Mr. MILLER.—It appears that the original entry was made by Mr. Grier and that this witness simply copied what Mr. Grier had written into another book.

The COURT.—Q. Did not you enter this yourself?

A. Possibly not that entry; you see the blotter is probably kept by a number of different parties connected with an institution or a concern.

The COURT.—Q. Where is the blotter; what has become of your blotter? [231]

Mr. LYON.—We will prove that we cannot find it, that a search has been made, and that it was lost—we will show that when we put Mr. Grier on the stand, or if the Court or counsel insists, we will call Mr. Grier back and ask him that question now.

The COURT.—I will let this go in at this time.

Mr. LYON.—We are not, of course, in this connection using these books as the books of account to prove the account there, simply using it as a memorandum made at the time.

The COURT.—It does not make any difference about that, so far as the admissibility is concerned.

Mr. CHAPPELL.—If your Honor please, I wish to urge that anything contained in the books is wholly immaterial to the case because it is not urged that it shows any prior public use by Mr. Grier, but some conception.

The COURT.—This standing alone might not, but if they do not connect it up it will go out.

Mr. CHAPPELL.—I do not believe I have made myself quite clear.

The COURT.—I understand you perfectly; of course it does not of itself show any prior use; what it may constitute as a body when they get through I do not know.

Mr. CHAPPELL.—They are not claiming as to any prior use, but as to some conception that was prior.

The COURT.—Part of that conception was the use of caustic soda in the processing of this fruit.

Mr. CAMPBELL.—I call your attention to page 198 of the ledger—

Mr. MILLER.—If your Honor will allow me one moment, the conception has nothing to do with us and can cut no figure in this case; a prior conception

(Testimony of J. R. Lusby.)

by a man that made entries in [232] his book does not prove anything.

The COURT.—Of course, it does not, standing alone; I understand that perfectly; it will not be considered unless it is connected up to make it material; standing alone, of course, it is immaterial.

Mr. MILLER.—What is that entry of August 1?

The COURT.—It is an item for caustic soda purchased from somebody or other.

Mr. MILLER.—I want to get the way it reads. How does it read?

Mr. CAMPBELL.—Supplies, \$31.05, next line, "East Side Canning, \$31.05."

The COURT.—Doesn't it say "caustic soda"?

Mr. MILLER.—It says, "Supplies."

Mr. CAMPBELL.—It is transferred into the ledger as caustic soda; I expect to show that by the next question.

Mr. MILLER.—That shows the validity of my objection to its not being the original book of entries.

The COURT.—Proceed.

Mr. CAMPBELL.—Q. Was this item under date of August 1, 1902, the journal to which I have referred, transferred or copied by you into any other book?

A. Transferred into the ledger from the journal.

Q. Calling your attention to page 119 of the "ledger," I will ask you to find the item upon that page to which you refer? A. August 1, Caustic Soda.

Mr. MILLER.—We object to that question as to its transference into the ledger because that has

(Testimony of J. R. Lusby.)

absolutely nothing to do with what is in the original book of the entry; even the book we have got here is not the original book of entry; the transfer [233] of it into the ledger has nothing to do with it.

The COURT.—What the purpose is now is to identify what that entry was for, what the purchase was.

Mr. MILLER.—Probably it would be admissible on that ground.

The COURT.—Answer the question.

A. The entry was made August 1, Caustic Soda, journal page 6, \$31.05.

Mr. CAMPBELL.—Q. That was the item covered by the entry in the journal referred to? A. Yes.

Q. I call your attention now to the journal on page 16, and ask you if you made the following entry under date of September 6, 1902, "expense \$4.50, Herlihy, \$4.50."

Mr. MILLER.—If your Honor please, without renewing my objection I suppose it will be understood that we object to all of these questions and note an exception to the ruling.

The COURT.—Yes.

Mr. CAMPBELL.—Q. Did you make that entry?

A. Yes.

Q. Was that entry transferred or copied into the ledger in due course of business? A. Yes.

Q. I call your attention to page 254 of the ledger, Defendant's Exhibit "N," can you locate the entry referred to under date of September 6th?

A. September 6, Lye, journal page 16, \$4.50,

(Testimony of J. R. Lusby.)

Credit to the Model Grocery Company, Herlihy & Company.

Q. I call your attention again to the journal, Mr. Lusby, page 20, under date of September 19, and to the following item, "Expense of \$4.00 Model Grocery Company, \$4.00," and ask you if you made that entry? A. I did.

Q. Did you in the usual course of business transfer that entry into the ledger? A. Yes.

Q. I call your attention again to page 254 of the ledger; [234] will you kindly read the item under date of September 19?

A. September 19, Lye, Journal 20, \$4.00.

The COURT.—I cannot allow you to multiply these items.

Mr. CAMPBELL.—The witness has gone over all these books and taken off a copy of the entries to which we intend to direct his attention and if the matter can be covered by some form of stipulation we can furnish a copy of the items.

The COURT.—The Court does not make stipulations but I will recognize any stipulation made by counsel.

Mr. CAMPBELL.—I see no other method than to pursue the inquiry along this line.

The COURT.—I cannot permit you to pile up mere cumulative circumstances of this kind. You have shown that there was some caustic soda bought, and there are a couple of items now of lye, and that is enough on one point.

Mr. WHITE.—Of course in 1902 the quantity of

(Testimony of J. R. Lusby.)

caustic soda bought by the Pasadena Canning Company has a bearing on the extent of the use of this machine.

The COURT.—I do not see why reserving your objection to the materiality and admissibility it cannot be stipulated that certain entries appear in these books?

Mr. MILLER.—I have no objection to that; he never asked me to stipulate to that.

The COURT.—This is interminable.

Mr. MILLER.—They have not asked me anything of that kind, but on your suggestion I am perfectly willing to do that; let him furnish me with a list of the various items.

Mr. CAMPBELL.—That list covers that, Mr. Miller.

Q. Did you know Mr. William H. Finley?

A. Yes.

Q. Where did you know him? [235]

A. He was working at the Pasadena Canning Company in the construction of the machine.

Q. During what year? A. 1903.

Q. Did you see the machine—what machine do you refer to?

A. What is called the Line Machine.

Q. For what purpose was that used?

A. The handling of peaches and lying the peach, passing it through the machine and removing its skin by the lye process.

Q. Did you see that machine in operation during the year 1903? A. I did.

Q. Can you describe that machine generally,—the

(Testimony of J. R. Lusby.)

machine that you saw in operation?

A. Well, somewhat, yes; it consisted of a large hopper in which the fruit was dumped and put through the lye, and passing from the hopper onto shakers, with the dropping of water over the fruit, cleansing it, passing down through water baths, removing the lye from it before canning. The mechanical construction of the machine of course I know nothing about.

Mr. CAMPBELL.—May it be stipulated that these items that I will now read are contained in the books under the date indicated in this list and were made by this witness in due course of business?

Mr. MILLER.—We have already stipulated that these appear in the books. I supposed that was a copy you gave me for private use.

The COURT.—Isn't it a copy?

Mr. MILLER.—Yes. He wants to read it into the record.

The COURT.—It is not necessary to read them. Give them to the Reporter and he will copy them in.

(The entries contained in the book are as follows:)

[236]

296 *Central California Canneries Company et al.*

EAST SIDE CANNING COMPANY.

(Journal page 6)

46 Supplies

Aug. 1, '02.

31.05

198

East Side Canning Co.

31.05

(Ledger page 198)

1902

(Other Items)

(Other Items)

Aug. 1. Caustic Soda 6 31.05

[237]

(Journal page 16)

10 Expense

Sept. 6, '02.

4.50

254

Herlihy & Co.

4.50

(Ledger page 254)

Model Grocery.

1902

Sep. 24, Grapes 21

2.50

Sep. 6

Lye 16 4.50

Oct. 4, Cash

29.45

" 19

" 20 4.00

Oct. 1

" 22 23.45

31.95

31.95

(Journal page 20)

11 Expense

Sept. 19, '02.

4.00

254

Model Grocery.

4.00

Ledger page 254

Model Grocery.

1902

Sep. 24, Grapes 21

2.50

Sep. 6

Lye 16

4.50

Oct. 4, Cash

29.45

" 19

" 20

4.00

Oct 1

" 22

23.45

31.95

31.95

(Journal page 22)

12 Expense

Oct. 1, '02.

23.45

254

Herlihy

23.45

Ledger page 254

Model Grocery.

1902

Sep. 24, Grapes 21

2.50

Sep. 6

Lye 16

4.50

Oct. 4, Cash

29.45

" 19

" 20

4.50

Oct 1

" 22

23.45

31.95

31.95

[238]

(Journal page 38)		May 29, '03.
194 East Side C. Co.		278.00
20	Tool & Fix.	278.00

(Ledger page 194)	
1903	East Side Canning Co.
May 29 Scalded 38	278.00 (Other Items)

(Journal page 54)		July 30, (1903)
East Side Canning Co.		
Labor	4—Convey vats—main line Putting in vats and placing in steam coil	
	(July) 30, (1903)	
195 East Side Canning Co.	275.00	225.00
21 Tools & Fix.		50.00
19 Labor		

(Ledger page 195)	
1903	East Side Canning Co.
July 30 Sund. 54	275.00 (Other Items)
[239]	

(Journal page 55)		July 31, 1903.
28 Expense		19.69
195	E. S. Canning Co.	19.69
	Soda etc., per inv.	

(Ledger page 195)		
	East Side Canning Co.	Cr.
	1903	
(Other Items)	July 31, Sup. 55	19.69

(Journal page 78)		Sept. 17, (1903)
69 Expense		19.69
195	E. S. Canning Co.	19.69
	Soda per inv.	

(Ledger page 195)		
	East Side Canning Co.	Cr.
	1903	
	Sept. 17	78
		19.69

(Journal page 80)		Sept. 18, (1903)
69 Expense		39.38
195	E. S. Canning Co.	39.38
	Soda per inv.	

(Ledger page 195)		
	East Side Canning Co.	Cr.
	1903	
	Sep. 18	80
		39.38

[240]

(Testimony of J. R. Lusby.)

Cross-examination.

Mr. CHAPPELL.—Q. To what extent did you notice the machine operating in 1903?

A. I witnessed the machine in the operation of peeling peaches during the process there, several days.

Q. Did they pare any peaches by hand that year that you noticed?

A. They pared some peaches by hand, but the bulk of the peaches were run through the machine.

Q. Did they do any hand work on those that were run through the machine? A. No.

Q. What was the grade of the fruit that was run through the machine, high grade or low grade?

A. Well, there was some of both; I saw both.

Q. Which grade of fruit was peeled by hand principally?

A. When they had some over-ripe fruit or anything of that kind around.

Q. The machine was not equal to the emergency of handling over-ripe fruit?

A. If it was too soft it got mushy going through the machine.

Q. How much fruit do you think was put through the machine in 1903?

A. I think probably 80 or 90% of the fruit went through the machine.

The COURT.—Do you mean in quantity or percentage? A. In quantity.

The COURT.—You asked him how much fruit was put through in 1903 and he simply gave the percentage; were you inquiry as to the quantity that

(Testimony of J. R. Lusby.)

went through or the percentage, Mr. Chappell?

Mr. CHAPPELL.—The quantity in a general way.

The COURT.—Q. Your answer is not responsive to that.

A. I could not say as to the quantity that went through.

Mr. CHAPPELL.—Q. When did the machine go into full operation that year—when did the peach season begin in which the [241] machine was used?

The COURT.—Which year are you speaking of now?

Mr. CHAPPELL.—Q. 1903.

A. Just the exact date I could not give you; along in July, the middle or latter part of July.

Q. Any way of refreshing your mind on that?

A. I might by referring to the books, purchases of fruit.

Q. You have not made any effort to refresh your mind about it? A. No.

Q. You could not be positive without doing so, could you? A. No.

Q. How about the machine in use in 1903 being in public or private use,—which was it—did the public have access to it while it was in operation, or not?

A. The public could see it. The cannery was always open to the public and Mr. Grier always admitted any visitors to his cannery—nothing private about the machines.

Q. You saw visitors looking the machine over at one time or another, did you?

(Testimony of J. R. Lusby.)

A. Yes, I saw visitors passing through and looking at the machine and the entire plant.

Q. There was no wall or fence around the machine of any description that you noticed?

A. No.

Q. There was not a partition about 7 feet high that surrounded this machine?

A. No partition whatever, in public view.

Q. Do you remember of any changes having been made in that machine after that year?

A. I do not.

Q. There might have been some made without your knowing about it? A. Possibly.

Q. You left the employ of the company in September, 1903, did you? A. Yes.

Q. When did you go back into their employ?
[242]

A. My day work ended in June, the 20th of June; I posted the books for him there still in the evenings along up to the 29th of September, from June 20th to the 29th of September.

Q. Did you render any service as a bookkeeper for the Pasadena Canning Company after that?

A. After the 29th of September?

Q. 1903?

A. No, I was not connected with them.

Q. Did you perform any service for them in any way after that date?

A. No, I don't remember that I did.

Q. You were not familiar with the machinery or the plant after that time? A. No.

(Testimony of J. R. Lusby.)

Q. To what extent were you familiar with the machinery in the plant before the season of 1903?

A. No particular familiarity with the machinery any more than witnessing the work of the machine; my work was confined strictly to the office; of course, I was in and out of the plant and witnessed the operation.

Q. You were about the plant in 1902, were you?

A. Yes.

Q. Was this plant that you refer to in the plant in 1902, that you remember?

A. No, it was not; it was in 1903.

Q. What was the method employed in the year 1902? A. In 1902 it was pared by hand.

**Testimony of George E. Grier, for Defendant
(Recalled).**

GEORGE E. GRIER, recalled.

Mr. LYON.—Q. Mr. Grier, how long have you been connected in any manner with the packing of fruit? A. 36 years.

Q. When did you first have anything whatever to do with the use of lye or caustic soda for removing or disintegrating the skins of peaches or other fruit?

Mr. MILLER.—We object to the question as leading and as [243] assuming something that is not proven

The COURT.—The objection is sustained.

Mr. LYON.—Q. Prior to 1902 had you ever peeled or assisted in the peeling of any peaches?

Mr. MILLER.—We object to that as leading and fixing a date.

(Testimony of George E. Grier.)

The COURT.—Why don't you proceed in the usual way and ask him what his experience as a fruit packer has been and lead up to it in a way that does not involve suggestive questions; that always gives rise to objection.

Mr. LYON.—Q. State your experience commencing with the first of it, with the peeling and packing and canning of peaches.

The COURT.—Q. Mr. Grier, you say you have been in the fruit-packing business for about 36 years?

A. Yes. That is, for myself and working for other people.

Q. What did that comprise, canning and drying?

A. Canning, and after I came to California, canning and drying, part of the time.

Q. By what process did you can and dry peaches?

A. To start out with, we of course peel them with the knife; that was in the early history of my experience, peeling them with a common knife and packing them in the usual way that any house packs them; in 1889, on December 3d, I came to California.

Q. Your early experience was not in California?

A. I say before that we just pared them with a knife, in Maryland.

Q. That early experience was not in California?

A. No.

Q. You came to California in 1889?

A. In 1889, yes. In 1890 I went to work for the California Fruit Canners' Association in Los An-

(Testimony of George E. Grier.)

geles and we handled a great many peaches at that place. [244]

Q. By what process?

A. Peeling them with a knife.

Q. Proceed. A. In 1891—

Q. —I am simply trying to show counsel there is no necessity for asking leading questions.

A. In 1891 I helped to install and look after the operation of an apparatus for dipping of peaches in hot lye.

Q. In 1891? A. Yes.

Q. Proceed.

A. That consisted of a vat made out of redwood about 4 by 5 feet in size and had an elevator or a rack as we call it with a shaker, shallow trays to hold the peaches; the whole peaches were put on these trays, dipped down into—

Q. —Submerged?

A. Submerged into the lye, as we called it at that time and left it in there approximately the better part of a minute.

Q. Agitated?

A. Agitated just a little bit, taken out and dipped into hot water and agitated some more, shook up and down in the way; this rack was on a crane elevator, with a regular derrick; we took them out of that and put them into a cold bath of water and went through the same performance, raised them up and put them on the edge of the tank and hosed them with a hose, with a nozzle—one of these—

Q. —The ordinary hose nozzle?

(Testimony of George E. Grier.)

A. These long sprinklers, yes and had girls there to examine them to see whether they were ready to go into the cutting-room to see whether they were perfect; the imperfect ones we would run back again through.

Q. That was the first method by which you used the process of the lye bath? A. Yes.

Q. Now advance?

A. In 1893 I also worked for the Southern California Packing Company.

Q. Do you mean 1903?

A. That was in 1892—they continued that same process of peeling peaches. I was what was known as [245] the processer there.

Q. How long did that process or method obtain in the treatment of peaches?

A. So far as I was concerned that ended it, as far as I was concerned I left their employment in the fall of 1892.

Q. What was your next experience?

A. In 1902, Mr. Taylor and I formed a partnership and leased the Pasadena Packing Company plant in Pasadena, and I installed a similar apparatus only of smaller dimensions, it was not as large, inasmuch as the one at the Southern California plant had six trays, we only had two; in 1902 we started out in the very first of the peach season with whole peaches; about the middle of August or about that time, I was down to see Mr. Taylor, with my partner, and he told me that it was all foolishness to try to continue with the peeling of whole peaches;

(Testimony of George E. Grier.)

he said you could peel halves after pitting just as well, and he demonstrated it to me in the factory and I immediately went back home and changed the proposition from a whole peach to a half peach.

Q. You are speaking now of this dipping process that you had followed before? A. Yes.

Q. That is, dipping by the same method that you had practiced?

A. Only on a smaller scale; we did not have as large an apparatus, and it was eminently successful practically speaking as an experiment, on the halved peaches.

Q. Do not dwell upon these details. What did you next do. That was in August, 1902 that you adopted the method of first having and pitting peaches? A. Yes.

Q. Before processing them with lye? A. Yes.

Q. What was the next step?

A. I conceived the idea right then of building a machine to do the work more rapidly, and the machine that I built in 1903 was the result of that conception. [246]

Q. State about the building of that machine and what it consisted of.

A. In the fore part of April I employed Mr. W. H. Finley to build some tanks to be embodied in this machine, that is, just the tub part, tank part of the machine, and I found before he had gotten the tanks built that he was a general handy man, that is, he could do iron work, pipe work and machine work, so I kept him to finish the machine. I built two ma-

(Testimony of George E. Grier.)

chines together; that is, we got the material for two machines at the same time; he had some of those machines, got them ready for the 1903 peach season.

Q. Describe that apparatus—a description of one of course will suffice—they were both alike

A. They were both identical.

Q. Describe one of them.

A. They consisted of four redwood tanks,—the first tank was 7 feet long and the other tank was 8 feet long—the other three—over the first tank we put in a shaker arrangement whereby the fruit was taken from one end to the other.

Q. You mean over the first tank into the lye bath?

A. Yes; and suspended over that shaker three spray nozzles, and after they came out of the shaker they went into the second tank, and we had a draper in that tank that carried them up and delivered them into the third tank, and then the same thing was delivered into the fourth tank and the fourth tank delivered them into tubs; they were carried from there to the packing-tables.

Q. That is, portable tubs?

A. That is galvanized iron tubs, that is my own plant, the Pacific Canning Company's plant; the machines are identical except the deliveries.

Mr. LYON.—Q. Now Mr. Grier; you referred to certain lye baths that were used in that connection; what were those? [247]

A. We installed a Grasshopper machine.

Q. From whence were those procured?

(Testimony of George E. Grier.)

A. We bought them from Berger Carter Company of San Francisco.

Q. Do you know when it was those were purchased? A. Along in April.

Q. What year? A. 1903.

Q. Where were those two Grasshoppers first delivered?

A. To our plant at Pasadena.

Q. Why were they both delivered there?

A. As the steam Grasshopper is sent out it has no heating arrangement in the bottom; the heating to scald tomatoes is done in the leg; all the water in the bottom is merely to wash the tomatoes and the scalding takes place as the screw takes them up through a barrel, a leg, after they leave the water.

The COURT.—Q. A barrel of what?

A. The leg of the Grasshopper, the uprise.

The COURT.—Q. What gives the name Grasshopper to that?

A. Its similarity in looks; I think there is a sort of idea that you can refer to.

Q. I have seen a number of them.

A. That is the only thing.

Mr. LYON.—Proceed. You say these were delivered there because they did not have any heating coil? A. Yes.

Q. How was that connected?

A. Owing to the arrangement of this barrel or leg that goes down into the water, to take the peaches from it or tomatoes—it is quite a job to get sufficient heating surface in there and heat the water;

(Testimony of George E. Grier.)

and as I was more familiar with that than Mr. Taylor he gave me that job to put the coils in. I put the coils in both Grasshoppers.

Q. Did you put them in for the purpose of heating lye? A. Yes.

The COURT.—Q. I infer from your suggestion that the [248] Grasshopper vat was merely used for the processing of tomatoes?

A. The scalding and loosening the skins on tomatoes.

Mr. MILLER.—In that connection they put hot water in the Grasshopper and scalded it like they used to do years ago, and that peels off the skin.

Mr. LYON.—Q. For what particular purpose, Mr. Grier, were those two particular Grasshoppers ordered?

A. To be used as scalders of peaches in this particular machine that I was building.

Q. Interrupting the continuity of your story a minute do you know what has become of the blotter which was kept by the Pacific Canning Company in 1902 and from which the entries into the Journal were copied?

A. After we incorporated we destroyed those books; after the Pasadena Cannery Company was incorporated and the partnership did not exist.

Q. Will you turn to the journal and state whether or not you find there any entry relating to the receipt or payment or charge for those Grasshoppers—look at the journal page 38.

A. Yes, that is right.

(Testimony of George E. Grier.)

Q. What is the entry there and under what date?

A. Under date of May 29.

Q. 1903?

A. 1903; East Side Canning Company tool and fixture account, so *are we* are concerned.

Q. What is the amount? A. \$278.02.

Q. What does that entry refer to and signify?

A. That represents the cost of the machine plus the freight.

Q. What machine? A. The scalding.

Q. The Grasshopper? A. The Grasshopper.

Q. Now, referring further to this same journal, page 54, do you find there any entry referring to this East Side Canning [249] Company machine to which you have referred? A. Yes.

Q. What is that entry?

A. On July 30, East Side Canning Company, Tool and fixture account, \$225; labor account, \$50. That refers to four accompanying vats on lye machine, vats placed in steam coil.

Q. That steam coil was the coil which you refer to as being placed in this Grasshopper? A. Yes.

Q. Or in use in this lye processing machine?

A. Yes.

Q. What you have read in regard to the four vats is contained in the entry on the books there?

A. Yes.

Q. By means of that entry are you able in any manner to fix the time when that East Side Canning Company machine, lye-peeling machine and apparatus was set up there?

(Testimony of George E. Grier.)

A. It was finished, it was all done when this entry was made here.

Q. Who assisted in erecting this East Side Canning Company machine in 1903? A. Mr. Finley.

Q. Who else besides Mr. Finley? Did you take part in it? A. I took part in it, yes.

Q. Do you know what has become of that machine?

A. It is still in existence.

Q. Do you know where any part of it is at the present time?

A. Part of it is in court; that is the shaker end of the machine as we call it.

Q. This Defendants' Exhibit "K"?

A. Yes, that is it.

Q. Will you explain to us what the arrangement of the sprays were upon that shaker at that time?

A. Identical with the section—

Q. —Just step over and illustrate how these sprays and shaker were arranged in 1903 upon the East Side Canning machine; also how they were arranged upon your machine at the Pasadena Canning Company.
[250]

A. They were arranged like this (illustrating).

Q. Please explain in words where with reference to this step in this shaker the first nozzle was arranged at that time?

A. Just so it would touch the peaches as they turned over.

The COURT.—Q. What do you mean by the first nozzle?

A. This.

(Testimony of George E. Grier.)

Q. A single nozzle?

A. Yes, just like that (illustrating).

Mr. LYON.—Q. Now, when were these two machines in 1903 first assembled and ready for testing in their two respective places, one in Los Angeles and one at Pasadena?

A. About the latter part of July.

Q. What was the first test that was made?

A. I would say about the 28th or 29th of July.

Q. What part of the machines did you first test I mean. A. We tested all of it.

Q. In testing the Grasshoppers—

A. —As a peeler, I mean.

Q. Did you make a test of the Grasshoppers as to whether they were ready for operation? A. Yes.

Q. What did you find in that regard?

A. We found that they would not hold water.

Q. What was done?

A. We had two machinists come and chip and caulk them.

Q. When was that work done, night or day?

A. It was done at night.

The COURT.—What is the materiality of that?

Mr. LYON.—Only to show it was done at night time because they were then waiting for the machines and had to have it done at night in order to get them to work.

The COURT.—It does not make a particle of difference. [251]

Mr. LYON.—Q. Who did the work on this caulking; where did the men come from?

(Testimony of George E. Grier.)

A. The Baker Iron Works.

Q. Los Angeles? A. Yes.

Q. Now, where did you secure your supply of water for your machine in the Pasadena Canning Company plant in 1903?

A. The Lake Vineyard Land & Water Company, Pasadena.

Q. That was the city water-main? A. Yes.

Q. Do you know where Taylor at the East Side Canning Company secured his water?

A. From the city main.

Q. Do you know anything about what pressure he had at that time?

A. Mr. Taylor's pressure was very low; it was not enough to do the work.

Q. What, if anything, was done in that connection at the Taylor East Side Canning Company plant?

A. He placed a pump.

Q. What was done with the pump?

A. We put it in the line and pumped water from the city main on to the nozzle.

Q. Do you know where the pump came from?

A. Yes, the Baker Iron Works, Los Angeles.

Q. Do you know when it was delivered?

A. Yes.

Q. When? A. Early in August, I think, the 3d.

Q. Of what year, 1903? A. 1903, yes.

Q. Now, then, reverting back, Mr. Grier, you said that in 1902, along in August, you conceived the idea of building a machine. Had you talked with anybody about what your ideas were? A. Yes.

(Testimony of George E. Grier.)

Mr. MILLER.—We object to that as immaterial, irrelevant and incompetent, whether he conceived the machine in August and talked about it, that is not material.

Mr. LYON.—If your Honor please, in that connection our [252] defense here is that Grier was the prior inventor and we will prove a conception of the invention prior to Mr. Dunkley's conception, and we will prove that with all diligence he proceeded to reduce it to practice which gives him the right as the prior inventor to any patent, if any patent is secured on it, and the right to dedicate the invention to the public, and Mr. Dunkley as a subsequent inventor could secure no rights.

The COURT.—I can understand your defense but it must be proved in a proper way; it is not competent evidence for that purpose.

Mr. WHITE.—If your Honor please, in that regard, in regard to proving the conception of anyone, I will say this: that it has been the recognized practice in the patent law practice to prove conception by proving a disclosure of the invention either orally or in writing by the inventor to some other party. Now, in this case, the plaintiff, no doubt, when it comes to prove its case will attempt to prove the conception by Mr. Dunkley by having him relate a conversation between himself and his son.

The COURT.—I think that is self-serving and I do not believe that it is admissible.

Mr. WHITE.—All I want to draw your attention to—

(Testimony of George E. Grier.)

The COURT.—If you can prove by somebody that this witness told him, told a third party about his conception, that is different, but to permit this witness to say that he told somebody and state what it was, it strikes me as entirely objectionable.

Mr. WHITE.—All we want is a uniformity of ruling on this point.

The COURT.—You have not any uniformity?
[253]

Mr. WHITE.—No, if your Honor please, I simply want to explain my position in regard to this point, if your Honor is to rule that the witness as the inventor—

The COURT.—I am not making any compacts at all; I am ruling as I go along.

Mr. WHITE.—I simply wish to have opposing counsel understand what our position is in regard to this matter.

Mr. MILLER.—I think I thoroughly understand your position.

Mr. WHITE.—Under ordinary circumstances we would not object to that character of testimony because it is recognized practice to have it introduced.

The COURT.—That is a different thing; if you can show me it is recognized by authorities that is a different thing; to let a witness state that he told somebody else, that is a self-serving declaration, which it strikes me is purely hearsay and most vicious.

Mr. WHITE.—It is the general practice in proving the date of conception to have the inventor tell

(Testimony of George E. Grier.)

to whom he discloses his invention; the patent office rules provide in an interference that the inventor shall show his disclosure to others.

The COURT.—That is a different thing,—to ask him to state whether he disclosed it, but not to state what he said.

Mr. WHITE.—In all interference proceedings, to substantiate the date of disclosure it is the practice to ask the inventor when and to whom he disclosed the invention, and what he said, so that the patent office officials may know whether or not this disclosure which he says was made of the invention was in fact a disclosure.

The COURT.—The objection is sustained.

Mr. LYON.—Note an exception. [254]

Q. You stated, Mr. Grier, that in 1903 you built two of these machines. How long did you continue to use the one in the Pasadena Canning Company's plant?

A. Until the end of the 1914 peach season.

Q. Did you use it each year?

A. Continuously, yes, every year.

Q. Do you know how long the East Side Canning Company continued to use their machines that you have referred to?

A. Yes, the same length of time; the machine is still in working order.

Q. Did you ever build any other of these machines? A. Yes.

Q. When? A. In 1904.

Q. State the circumstances.

(Testimony of George E. Grier.)

A. I built two complete machines in the spring of 1904 and a shaker end of another machine at the same time.

Q. For whom were those built?

A. One for the Orange County Preserving Company of Anaheim, California, and one for the G. H. Waters Company of Pomona, and the shaker end of the machine for G. H. Waters' Fruit Company at Ontario.

The COURT.—Q. That was in 1904?

A. 1904, yes.

Mr. LYON.—Q. Do you know what was done with those machines?

A. They were used in peeling peaches.

Q. For how long was the Orange County Preserving Company machine used at Anaheim?

A. Until the fall of 1913, when it was destroyed by fire. Their plant burned up.

Q. Do you know what became of the Waters' machine?

A. They used it for a year or two and then got something else.

Q. How did those machines, the Orange County Preserving Company machine, the Waters' machine, and the shaker for the Waters Fruit Company compare with the East Side Canning Company and the Pasadena Canning Company's machines as built in 1903 and used? [255]

A. They were practically identical.

Q. I will ask you to take the day-book and ledger covering the dates of 1904 and state to us if you know

(Testimony of George E. Grier.)

who made the entries therein and when those entries were made.

A. During what year?

Q. 1904. A. E. L. Toon.

Q. Do you know where Mr. Toon is?

A. Mr. Toon is dead.

Q. Do you know whether these entries were all made in the usual course of business?

A. Yes, I know they were.

Q. Under whose instructions? A. Mine.

Q. Did you have personal knowledge of the several items as they were entered? A. Yes.

Q. At the time? A. Yes.

Q. Now, referring to the journal on page 112, do you find anything in that referring to this Orange County Preserving Company machine? A. Yes.

Q. What is it?

A. A charge against the Orange County Preserving Company, \$360.

Q. For what?

A. Supplies, four line tanks complete, \$90 apiece, \$360.

Q. Referring to the ledger on page 187, do you find your Orange County Preserving Company account?

The COURT.—What is it you want to prove?

Mr. LYON.—Just simply that it was charged for in that account and the machine was paid for.

The COURT.—He can look it up during the noon time.

Mr. LYON.—Q. Was that Orange County machine paid for at that price?

(Testimony of George E. Grier.)

A. Yes.

Q. The date of the first entry there was June 21, 1904, and during the noon we will show you the entries for the others in this same manner, Mr. Miller, and we offer these books in evidence in connection with the testimony of this witness. [256] Now, in 1903, to what extent if at all, was this machine used at the Pasadena Canning plant?

A. We peeled practically all of our peaches.

Q. In 1904? A. All of them.

Q. And thereafter to what extent?

A. All of them.

Q. Can you give us substantially the tonnage that went through this machine at the Pasadena Canning Company's plant in 1903?

A. Not in round numbers, no; it could be taken from the books.

Q. The books will show it?

A. Yes, practically, substantially.

Q. Can you by reference to those books show when that Pasadena machine was first used in 1903?

A. I could come within a very few days of it, yes.

Q. By reference to what account or items?

A. Fruit account.

Q. Have you looked that up?

A. Well, somewhat, yes; I have not got it in mind.

Q. Please look it up during the noon hour and be prepared to call our attention to this particular item at that time.

Mr. MILLER.—Just ask him now what the date was; he may remember it.

(Testimony of George E. Grier.)

Mr. LYON.—Q. Do you remember the date?

A. Not right off the bat, no.

Q. How close to it can you give it?

A. I should judge it was the latter part of July.

The COURT.—He has said that before.

Mr. MILLER.—He said July 29th.

A. About that date.

Mr. LYON.—Q. I want to call your attention next to the photographs attached to the stipulation in this case and marked Defendants' Exhibits B-1 to 8, inclusive, and ask you if you have ever seen those photographs before?

Mr. MILLER.—We object to that question as leading; why [257] don't he first prove that the photographs of the machine were made; to hand the photographs to a witness and ask him what it is, is a leading way.

The COURT.—I thought that these photographs attached to that stipulation were conceded to have been taken.

Mr. MILLER.—Conceded to have been taken of a machine of some kind, but we don't know where the photographs were taken.

Mr. LYON.—In my next question I am going to ask him that. Do you know of what machine these photographs were taken?

A. The East Side machine.

Q. Were you personally present when they were taken? A. Yes.

Q. The East Side machine you refer to was the one that was built in 1903? A. Yes.

Mr. MILLER.—Ask him when the photographs were taken.

(Testimony of George E. Grier.)

Mr. LYON.—Q. When were the photographs taken?

A. Sometime in January I think of this year.

Q. January, of this year? A. Yes.

Q. And this tank and shaker and spray-pipe of Defendants' Exhibit "K" are part of the machine of the East Side Canning Company? A. Yes.

The COURT.—He has said that several times.

Mr. MILLER.—It is all leading, anyway.

The COURT.—I pay attention to the evidence as it comes in. It is not necessary to repeat it.

Mr. LYON.—I did not want any chance taken as to that identification. That is all.

The COURT.—The Court will be in recess until 2 o'clock.

(A recess was here taken until 2 P. M.) [258]

AFTERNOON SESSION.

Mr. WHITE.—If your Honor please, this morning, in respect to your Honor's sustaining the objection to Mr. Grier referring to any conversation of his in 1902 regarding his conception of this invention, you suggested the possibility of some authorities being procured; of course I understand your Honor has ruled, but I presume you have no objection—

The COURT.—Oh, no.

Mr. WHITE.—That is how I understood the situation. In the case of Sayles vs. Hapgood, Federal Case, No. 12,420, the Court said—

The COURT.—What was the case—where from?

Mr. WHITE.—This is the Circuit Court, North-

(Testimony of George E. Grier.)

ern District of Illinois, October 10, 1869, District Judge Drummond states as follows: "The only remaining question is, thirdly, as to the time of the conception of the two machines. Here all we have on the part of Dundas is the testimony of the father and of the son. About this, of course, there may be room for forgetfulness, mistake or error. When a man conceived a certain machine, no one knows except the man himself; when he described it, no one knows except himself and the person to whom he describes it. We have to rely upon their testimony in order to determine."

Now, on that same subject the Supreme Court of the United States says—

The COURT.—That does not sustain this proposition at all. Of course this witness has testified when he had conceived this invention. You are asking now to corroborate him by having him testify that he told someone else.

Mr. WHITE.—Yes; he has stated that he conceived the invention in 1902, but that is a mere conclusion on his part, [259] unless he states—

The COURT.—Certainly it is not; it is a fact.

Mr. WHITE.—If your Honor will allow me to read this authority from the Supreme Court: "The next exception is to the admission of the evidence of William A. Simpson, Richard Caton and George Neilson, as to certain declarations and statements, and conversations of the plaintiff as to his invention prior to the date of his original patent; in order to rebut the evidence of the defendants as to the inven-

(Testimony of George E. Grier.)

tion or use by other persons of the same contrivance, before that date. The objection is that, upon general principles, the declarations and conversations of a plaintiff, are not admissible evidence of his own rights. As a general rule this is undoubtedly true. It is, however, but a general rule, and admits and requires various exceptions. There are many cases in which a party may show his declarations comport with acts in his own favor, as a part of the *res gestae*. There are other cases, again, in which his material declarations have been admitted. Thus, for example, in the case of an action for an assault and battery and wounding, it has been held that the declarations of the plaintiff as to his internal pains, aches, injuries and symptoms to the physician called to prescribe for him, are admissible for the purpose of showing the nature and extent of the injuries done to him. In many cases of inventions, it is hardly possible, in any other manner, to ascertain the precise time and exact origin of the particular invention. The invention itself is an intellectual process or operation; and like all other expressions of thought can in many cases scarcely be made known, except by speech. The invention may be consummated and perfect, and may be susceptible of complete description in [260] words, a month, or even a year before it can be embodied in any visible form, machine or composition of matter. It might take a year to construct a steamboat after the inventor had completely mastered all the details of his invention, and had fully explained them to all the

(Testimony of George E. Grier.)

various artisans whom he might employ to construct the different parts of the machinery. And yet from those very details and explanations, another ingenious mechanic might be able to construct the whole apparatus, and assume to himself the priority of the invention. The conversations and declarations of a patentee, merely affirming that, at some former period, he invented that particular machine, might well be objected to. But his conversations and declarations, stating that he had made an invention, and describing its details and explaining its operations, are properly to be deemed an assertion of his right at that time, as an inventor to the extent of the facts and details which he then makes known; although not of their existence at an antecedent time."

The COURT.—That authority looks in your favor.

Mr. WHITE.—That is what I was getting at.

The COURT.—The other does not touch upon the subject.

Mr. WHITE.—“In short, such conversations and declarations, coupled with a description of the nature and objects of the invention, are to be deemed a part of the *res gestae*; and legitimate evidence that the invention was then known to and claimed by him, and thus its origin may be fixed, at least as early as that period. This view of the subject covers all the parts of the testimony of the witnesses objected to in the Circuit Court; and we are of opinion, that the court was right in admitting the evidence.”

(Testimony of George E. Grier.)

Now, I take this position that if the evidence as to [261] these conversations in which the witness has described his invention in 1902 are competent evidence and can be proved by third parties, then this witness is not debarred under any rule of law from proving the same thing; in other words, if his statements as a matter of fact are competent evidence then he is a competent witness to prove these statements as well as any other witness, because certainly the time has passed when a party is required to testify in his own behalf.

In this regard, if your Honor please, I will state that a great deal of the testimony of the Dunkleys in another matter, the opposing counsel Mr. Chappell apparently took the same view that I am taking because he called father and son, and that being the general practice among patent attorneys, it is for that reason I would like to have our views aired at this time. I do not know whether opposing counsel will even challenge this general practice.

Mr. CHAPPELL.—Of course, this is a matter of defense of this patent. The defense is there was something in existence prior that anticipated the Dunkley invention. These people are not here as rival inventors of something; the question is did this inventor or did this man Grier have something that anticipated Dunkley; now, anything that is short of the structure to complete the anticipation, the date that Dunkley is entitled to, falls short, so that his conception of something that was produced later is

of no consequence so far as this infringement suit is concerned.

The COURT.—That does not reach the point. If this does not tend to show a conception which would anticipate your invention then of course it does not amount to anything, but if he made such a conception then this authority of the Supreme Court would seem to recognize the propriety of such [262] evidence as this.

Mr. CHAPPELL.—I think I have not made my proposition entirely clear. Where there are rival inventors claiming the same invention in a proper proceeding, then the date of relative conception of the invention come in for consideration, but this is statutory matter, and the only thing that can anticipate Dunkley's invention is a complete device completed before the date that he is entitled to have considered.

The COURT.—Yes, that is true.

Mr. CHAPPELL.—He has applied for his patent; the patent law is that where he has applied for a patent and taken it out, that he is entitled for that invention to the date on which he conceived it if he has been reasonably diligent in reducing it to practice.

The COURT.—Yes.

Mr. CHAPPELL.—That is the reward given to him by the Government, and they protect him and protect that date of conception, but when it comes to anticipating by someone who is not a rival claimant to the invention and who is not claiming the same right under the patent laws, then only is the matter material when he has a complete production of the

device, because under these circumstances it would be too easy a matter for someone to come along and say I thought of that years ago, if he was doing nothing to give the benefit of his thought and invention to the public.

The COURT.—Now, you concede that if in such a case he can show that he has conceived a thing which is a complete anticipation that such evidence as this is admissible to establish that?

Mr. CHAPPELL.—If he is entitled to make the claim as a rival inventor.

The COURT.—I do not think that the rule can be restricted [263] by that because one who was defending himself against a claim of infringement certainly can show any evidence which would invalidate the claim of the plaintiff to priority.

Mr. CHAPPELL.—But conception does not; it is the complete device; these conceptions are easy to refer to; it is not what Mr. Grier may have conceived but what did he do; where an inventor has taken a patent then the law recognizes him as the inventor and reaches back and gives him the benefit of the date of his conception, but when the statute says that they must anticipate, then no mere conception by anybody anticipates; it must be his completed article; that was the reason, if your Honor please, for our objection, the law recognizes the distinction, and where the inventor comes forward, he is entitled to air his date of conception, but date of conception has nothing to do with the anticipation of a patent after it has been issued.

(Testimony of George E. Grier.)

The COURT.—I will receive the evidence subject to the objection; I may strike it out hereafter; as long as the witness is here from abroad I will let you inquire of him; in the light of the discussion I doubt very much whether it is material at all.

Mr. LYON.—We will substantiate that later by referring to the fact that the defense here is a use of the actual thing prior to any date that Mr. Dunkley can claim, and also show your Honor that this is a perfect defense if this man was in fact the first inventor and diligently reduced it to practice, which is the law on that, controverting the position of counsel for the plaintiff.

The COURT.—Go ahead and take the evidence.

Mr. LYON.—Before going into that, as I believe Mr. Grier has in his hand the journal—I asked him just before adjournment [264] to refer to the journal and from that state when it was that they first started the use of this machine at the Pasadena Cannery Company plant at Pasadena in 1903.

Mr. MILLER.—What has that book got to do with that; let him answer the question without it.

The COURT.—Q. Did you make the entries in this book?

A. It was under my supervision; I did not make the entries.

Q. You mean they were your books and they were kept in the due course of business under your supervision? A. Yes.

The COURT.—I do not think that is a memorandum that he can refresh his memory from.

(Testimony of George E. Grier.)

A. In the latter part of July, 1903, we started to operate this machine.

The COURT.—He has testified to that several times.

Mr. LYON.—Q. Now, Mr. Grier, I do not believe that I asked you how or with what your water supply for this machine in 1903 at the Pasadena Canning Company was connected?

The COURT.—Yes, you did.

A. The city main.

Mr. LYON.—Q. Was the connection the same in 1904? A. No.

Q. In what way was it different?

A. We put in a pump.

The COURT.—He testified to that.

A. We put in a pump in our machine; we put in a pump at the East Side machine the first year.

Q. The other was with reference to the East Side?

A. Yes; I was standing over there when I said that; we put the pump in the first year with the East Side.

Q. But in 1904 with the Pasadena plant?

A. In 1904 we put in one at Pasadena; we had about 70 pounds pressure at Pasadena to start with; we did not need it then.

Mr. LYON.—Q. Referring to what is termed the baffle in [265] this East Side Canning Company machine as exemplified in the exhibit before us how did that compare with any baffle used in the Pasadena machine?

A. We had it made out of iron instead of wood, a

(Testimony of George E. Grier.)

piece of galvanized iron.

The COURT.—Q. The office it performed was the same? A. The same thing, yes.

Mr. LYON.—Q. In 1902 did you discuss any machine for this purpose with anyone? A. Yes.

Mr. MILLER.—We object to that as wholly and utterly immaterial, irrelevant and incompetent and leading and suggestive and vicious in every particular.

The COURT.—The objection will be sustained to that question.

Mr. LYON.—Q. You say that you conceived this invention during the peach season of 1902. With whom did you discuss it at that time?

Mr. MILLER.—I object to that question upon the same grounds and furthermore the particular ground that this character of evidence is wholly and utterly immaterial.

The COURT.—I have already ruled on that.

Mr. MILLER.—I know your Honor has, but I want to reserve an exception.

The COURT.—I sustain your objection upon the first ground, it is leading and suggestive, and assumes something that the witness has not testified to.

Mr. LYON.—Q. Who was in your employ in the Pasadena Canning Company during the peach season of 1902?

A. I do not just understand that.

The COURT.—Q. Who was in your employ?

Mr. LYON.—In 1902, during the peach season?

(Testimony of George E. Grier.)

The COURT.—Q. During the fruit season?
[266]

A. We had Mr. C. L. Kennedy, Mr. W. F. Hermann and Mrs. Grier, my wife, in the factory, all the time.

Mr. LYON.—Q. Did any of these see the structure that you tried with the hose in washing off the peaches? A. Yes.

Q. Which one? A. All of them.

Mr. MILLER.—We object to that as utterly immaterial, irrelevant and incompetent whether they saw it or not, because what difference does it make if these people saw them squirting the hose on to these peaches?

The COURT.—I do not care anything about that, I will let the evidence go in.

Q. Now, Mr. Grier, if you know what people saw it, because lots of us are in the vicinity of things that we do not see—if you know of your own knowledge that they saw it, and how you can know that I could not tell because you and I could be in the same room together and in front of the same object and you could not tell whether I saw the same object at all?

A. We discussed the matter.

Q. That is a different thing?

A. We discussed the matter.

Mr. LYON.—Q. Who did you discuss the matter with?

A. With all three of these, both Mr. Kennedy and Mrs. Grier.

Q. Do you remember this conversation?

(Testimony of George E. Grier.)

A. Yes.

Mr. MILLER.—If your Honor please, we object to that as immaterial, irrelevant and incompetent and does not relate to this invention at all; it relates to hosing off other things with which we have nothing to do, and no way of rebutting or meeting it in any possible way; I submit that it is incompetent evidence.

The COURT.—Q. What was it you discussed with Mr. Kennedy?

A. Mr. Kennedy helped me actively in proving one thing, that is, whether or not the jet of water would take the slime and [267] disintegrated peel from the peaches, and I told him that—

Mr. MILLER.—Never mind—I object to what you told him.

The COURT.—Q. He is just asking who you discussed it with?

Mr. LYON.—Q. What conversation did you have at that time with Mr. Kennedy?

Mr. MILLER.—We introduce our objection, which raises the issue squarely.

The COURT.—I will overrule that.

Mr. MILLER.—We note an exception, and I presume the same ruling and exception with regard to all questions asked on this subject matter may be deemed as made?

The COURT.—Yes.

A. We talked of the matter of building a new machine, a machine to do the work that we were doing by practically hand work, and had practically

(Testimony of George E. Grier.)

quite a heated argument at times.

Q. No, Mr. Grier, do not put your construction on whether it was heated or cool. Tell us what was said.

A. We had an argument as to the type or kind of a machine that would produce the best results and I explained to him fully what my idea was of it, and practically proved to him that my machine would do the better work of the two.

The COURT.—You see this has all got to go out; it is not responsive to what you were asked.

Q. You say you explained to him; these are conclusions. Tell us in substance what it was you said to him?

A. That I would build a machine with a shaker with the jets of water over the top and moving peaches under the jets; that is it in substance; and have some tanks to cool the peaches after they came out from under the jets.

Mr. LYON.—Q. Did you have any conversation during the peach-peeling season of 1902 with Mrs. Grier? A. Yes. [268]

Q. Can you give us the substance of that conversation?

A. These conversations generally took place at the lunch table where Mrs. Grier was present.

Q. You mean when Kennedy and Mrs. Grier were present? A. Yes, and myself.

Q. With regard to Mr. Hermann?

A. Later on in the season I told Mr. Hermann that I was going to build a machine, that I had it fixed

(Testimony of George E. Grier.)

out to my own satisfaction, I was going to build a machine that winter to do the work.

Mr. LYON.—That is all; you may inquire.

Mr. MILLER.—I move to strike out all of this evidence that has been given by this witness in regard to this conversation and things of that kind on the ground that it is immaterial, irrelevant and incompetent.

Mr. LYON.—There is one other question.

Q. I wish you would turn to the book of 1904, the journal, pages 109, 110 and 112, I believe, and point out any items or entries therein made which refer in any manner to G. H. Waters & Company or the Waters Fruit Company?

The COURT.—Read the last answer of the witness, Mr. Reporter. (The last answer read.) Let that all go out. That does not come within the rule at all.

Mr. WHITE.—That last answer?

The COURT.—Yes.

A. On April 14, to April 16—

Mr. LYON.—Q. 1904? A. Yes.

Q. Read the entries.

A. We sold to G. H. Waters at Pomona one line washing-machine and 4 two-inch sewer valves.

Mr. MILLER.—Q. Whose handwriting is that in?

A. That is Mr. Tooms.

Q. In his handwriting? A. Yes. [269]

Q. You did not make the entry yourself, did you?

A. No.

Mr. LYON.—Q. Did you know of the occurrence at

(Testimony of George E. Grier.)

the time? A. Absolutely, yes.

Q. Do you know what this refers to?

A. Yes.

Q. What does it refer to?

A. It refers to a peach-peeling machine.

Mr. MILLER.—I object to it as immaterial, irrelevant and incompetent.

The COURT.—The evidence as to the fact may stand but the reference to the item in the book goes out.

Mr. LYON.—That is all, you may inquire.

Cross-examination.

Mr. CHAPPELL.—Q. Considering the books that you have in evidence do you find a peach-peeling or peach-washing machine as such mentioned at any place in the books? A. No.

Q. Do you know how much caustic soda you bought in the year 1903?

A. I can prove that absolutely by the books.

Q. Offhand you don't know how much you bought?

A. I would think in the neighborhood of four or five drums—700-pound drums.

Q. Do you know who you bought it of?

A. Yes.

Q. Who did you buy it of?

A. I bought it at the East Side Canning Company and the Model Grocery Company.

Q. How much did you buy in the year 1902?

A. Two or three drums; I have not refreshed my memory on that.

Q. Please state your recollection from year to year,

(Testimony of George E. Grier.)

from 1891 on, the extent that you practiced the peeling of peaches by the lye process and if you discontinued for any term of years indicate what.

A. 1891 you are speaking of now?

Q. Yes.

A. 1891, 1892, and then I skipped till 1902; I went to work— [270]

Q. —Why was not the process practiced until 1902?

A. Well, I went to work for a different firm; I was working for Mr. Waters at Pomona, and we did not have any apparatus out there to do it.

Q. In practicing that in 1891 and 1892, what grade of peaches did you operate on?

A. On the smaller peaches.

Q. Did you succeed in getting the lye all off from them when you were doing that work?

A. All on the outside, yes; a lot of peaches that were split pits the lye would go inside.

Q. How did you accomplish that?

A. They had to be cut open and washed out afterwards.

The COURT.—Q. Do you mean the lye would penetrate through the stem opening?

A. Yes, lots of peaches have a space, the Muir peaches, and the stem end is open, and that would penetrate in; the Clingstone peach would have a split pit and it would run in.

Mr. CHAPPELL.—Q. Wherever there is a depression on the surface of the peach there is always an accumulation of the lye material, is there not?

(Testimony of George E. Grier.)

A. The water would take that off, if it had been disintegrated, yes.

Q. It was necessary to hand wash the peach in order to do it, was it not?

A. No; that is where the spray came in, it would wash that off.

Q. I was referring back to 1891 and 1892.

A. We used the hose on the peaches at that time, the hose with a nozzle on it, and sprayed them off.

Q. Do you know Mr. H. A. Beekhuis? A. No.

Q. Did you ever hear of him? A. Yes.

Q. Did you ever see any of the Beekhuis patents on peach-peeling machines?

A. I think I have, yes.

Q. Regarding the machine which you say you made in the year [271] 1903, what steps did you take to exclude the public from examining that machine?

A. No steps at all; the first year it was right in the room the same as sitting in here, open.

Q. Did not put any partition around it in any wise; is that right?

A. The next year we did, yes.

Q. How did it happen that you did that the second year?

A. We were crowded for room quite a little bit, we had to work our apparatus up pretty close to the lye tank.

The COURT.—Q. What do you mean by the next year?

A. 1904; and once in awhile that lye-tank would

(Testimony of George E. Grier.)

boil over, and to protect them a fence was put around there to keep the splash from coming out and scalding anyone.

Q. That was simply for protection against the splashing and over-boiling and not against the public at all; Mr. Finley was the operator; he had absolute orders to not let anybody get behind there, they might get hurt; he stayed right with that machine all the time.

Mr. CHAPPELL.—Q. No such orders as that were issued in 1903?

A. They kept them away from that lye-tank, yes; it was a dangerous proposition; boiling lye is a pretty dangerous proposition.

Q. What means did you make use of to heat that lye that would be likely to cause it to boil?

A. We had close coils in the bottom of the tank heated by radiation.

Q. Where did you get your source of heat from?

A. Boiler.

Q. How hot did you ever get it?

A. We could get it hot enough to boil out of the tank, boil it over the top, after it got a little dirty; we always kept it at boiling heat.

Q. You found it necessary to keep it boiling hot to do the work; is that right? A. Absolutely.

Q. When did you find out that that was necessary?

A. In 1891. [272]

Q. Then you used boiling lye in 1891; is that right?

A. Yes.

Q. You don't remember just how many peaches

(Testimony of George E. Grier.)

you peeled in 1903 with the lye machine?

A. Well, I expect I could come closer to telling you than anyone else; I would say from 450 to 600 tons.

Q. Did you peel any by hand that year?

A. A few; we had some old ladies, several that could not work in water, could not work in where it was wet, and we kept them peeling cling peaches. We did not peel any freestones by hand; we did clings that way. Inasmuch as we used boys to pit these cling peaches, we did not have any use for the rest, or a lot of our women.

Q. Did it seem to you that the use of that apparatus in 1903 was going to save labor to any extent?

A. Very much so, yes.

Q. To what extent do you think that would save labor over the previous practice?

A. I don't know as I ever figured it that way exactly, from that standpoint.

Q. How did you figure the saving?

A. Well, I knew there was a good big saving there; we paid 12 cents—

Q. —Didn't it save the pay-roll of all those operating with knives and paring machines?

A. We generally kept about the same amount of them, but we increased our capacity, that is, we had a bigger capacity; our pay-roll—

Q. —What did you have the people do?

A. Pit and cut them and pack them; we had to have more packers when we got more peaches out. That is, put them in the cans, and more people around to handle the cans, you understand, and more people to truck fruit.

(Testimony of George E. Grier.)

Q. Then you saved the labor bill for the peeling, did you not? A. Very materially, yes.

Q. Did you apply for a patent on the layout?

A. No. [273]

Q. Did you ever apply for a patent on anything?

A. Oh, yes; I applied for several and had obtained a few before I made this machine.

Q. How did it happen that you did not apply for a patent on this?

A. I did not think it was patentable.

Q. Did you take any advice on that?

A. No. I merely put a lot of ideas together that were old as the hills, and I got the shaker part from a fanning-mill or a separator on a thresher-machine, the same thing, run by crank; took the old Grass-hopper that was old, took the draper to carry it up out of there that I had seen in the east before I went to California; of course I made it in a different style; it was a different proposition.

Q. At the same time you appreciated that you had made a great saving in the matter of the expense of peeling peaches, did you not? A. Yes.

Q. That never had been done before that you knew of, had it? A. In the other way, yes.

The COURT.—Q. What do you mean by the other way?

A. By the hand, as was done in 1891 and '92; as I looked at it then it was the same thing.

Q. How did you *become* to abandon this then between 1891 and 1892 and 1901 and 1902?

A. Well, I left the place; we did not have any

(Testimony of George E. Grier.)

apparatus when I went to Pomona and I did not put it in; I did not like the idea, to tell you frankly, I did not like the idea of the whole peach proposition, peeling them whole because the girls had their hands scalded with lye when they were cutting them.

Mr. CHAPPELL.—Q. Where did you get the notion of the step from one level down to another in this shaker?

A. I don't know exactly where; I found, and anyone can see that it will turn over when it falls down; that is the idea; [274] I guess that came out of the whole cloth, I guess I originated that myself.

Q. You didn't know that anyone else had done it before you? A. No, I did not.

Q. That was rather important to get the peach to turn the other side up, was it not?

A. Yes, it was.

Q. Mr. Finley put that on after he started to work for you, didn't he?

A. Under my direction, yes. That is the step we are now speaking about?

Q. Yes. A. Yes.

Q. In having Mr. Finley work for you did you provide him with any drawings?

A. I am not a draughtsman at all; I just kind of drew it up rough and told him by mouth, by word orally what I wanted him to do, and he was very quick to catch on, and I had all the material there and he assembled it; I had all the material practically there when he came to work for me.

Q. Where did you get the idea about the upright

(Testimony of George E. Grier.)

pivoted arms that the shaker rests on when it oscillates back and forth?

A. From the separator of a thresher machine and also a fanning mill.

Q. Aren't they hangers in the fanning-mill rather than arms that stick up in that?

A. They act as supports, or stand upright, and they make a spring.

The COURT.—Q. Where are those?

A. The wooden ones are not there; the original ones were wood, your Honor; the iron ones are there now; we found out when we built the wooden ones, where the separator would run for years and years and still be good, when the wood got wet it would wear out and chafe and break; we got the best hickory we could buy and it would wear out in three or four weeks.

Mr. CHAPPELL.—Q. When did you put those iron swinging [275] supports on?

A. The next year, I think.

Q. That would be in the year 1904? A. Yes.

The COURT.—Q. Is the cannery still running?

A. Yes, we are still running, I mean the Pasadena Canning Company,—we operate every year.

Mr. CHAPPELL.—Q. You recently took a patent on a peach-paring machine, did you not?

A. A peach-washer.

Q. You did not claim it would peel peaches; is that right?

A. I do not think the patent calls for that.

Q. What of the machine—do you think the ma-

(Testimony of George E. Grier.)

chine would peel peaches?

A. That is what it is, a peach-washer; that is all that is.

The COURT.—Q. You say that is all it is; don't you claim—

A. —Never claimed it for a peeler; no.

Mr. CHAPPELL.—Q. You have discontinued the use of the shaker and the sprays at the present time at your plant, have you not?

A. Yes. My machine was about wore out; I run it eleven years continuously, eleven seasons; it was about wore out and I thought I would build a better machine, which I did.

Q. You received a notice about the Dunkley patent here in suit, did you not, before you discontinued the use of the machine?

A. Yes; I suppose that spurred me up a little bit.

Q. As a result of receiving that notice you designed this other machine?

A. I had it in my head before that, Mr. Chappell.

Q. But you completed the designing of it after you received the notice from Mr. Dunkley that he or his company owned this patent? A. Yes.

Q. And it was only after that that you discontinued the shaker with the sprays above it?

A. Yes. [276]

The COURT.—Q. Why did you discontinue that if you were aware that you had put it into practice first?

A. Well, the soft freestone peaches were washed away considerably with these sprays; the soft free-

(Testimony of George E. Grier.)

stones, they ripened and it was practically ruining our business, the canning business, by canning peaches that were too green; we could peel clings; they are like a piece of rubber, but freestone peaches, we would ruin the industry with them by doing it.

Q. With your process?

A. With a jet of water that would cut too much of the peach away.

Q. Under your process, you mean?

A. On the green peaches we could peel them.

Q. I say under your process you are speaking of?

A. Yes.

Mr. CHAPPELL.—Q. What did you do with your machine when you discontinued its use?

A. Dismantled it.

Q. Tore it to pieces?

A. Dismantled it, used anything, that is, like the sprockets or shafting, for other purposes.

Q. You made two of these machines concurrently, the very first you made? A. Yes.

Q. Did you have to experiment with them to be sure that they worked all right?

A. Not very much; no.

Q. Yet you made no drawings to see anything about its proportion before you started; is that right?

A. I had the proportions for Mr. Finley when he came there, told him how long to make the tanks, and how big to make the shaker and the step and so forth clear through.

Q. Did you have that noted down in some way for his benefit so that he could follow it?

(Testimony of George E. Grier.)

A. Yes we went over it together.

Q. What became of those instructions, if you know?

A. I don't know what became of them; I did not save them, anyhow.

Q. There was sufficient description for him to proceed by when he came? A. Yes. [277]

Q. Before you purchased the Grasshopper scalders as you call them for these machines you had purchased Grasshopper scalders for the other work, had you not?

A. No, that was the first I ever bought; I have seen them used however, but I never owned one.

Q. You knew they were a common thing in the market?

A. Yes, I have seen them catalogued.

Q. And as you had organized a cannery you needed a Grasshopper scalders for tomatoes, did you not?

A. We used it afterwards for tomatoes, took it out of the line and used it to scald tomatoes, used that particular one for two years, and then we left the one in the line and purchased another one for tomatoes, the same machine.

Redirect Examination.

Mr. LYON.—Q. You have referred on your cross-examination to a patent and a machine that you are using now in the Pasadena Canneries. Do you know what this structure is?

A. Yes, that is the machine.

Q. Do the drawings for this patent show the machine as you are now using it?

A. Practically, yes.

(Testimony of George E. Grier.)

Mr. LYON.—We offer this in evidence in connection with the cross-examination of the witness and ask that it be marked Defendant's Exhibit "P."

(The document is marked Defendant's Exhibit "P.")

Q. Why, Mr. Grier, do you refer to the device of this patent and the old original machine there as washers?

A. Because that was all they were, never were anything else.

Q. In what condition do the peaches come out of the lye bath or Grasshopper?

The COURT.—He has described that.

Mr. LYON.—Q. You stated, I believe, on cross-examination [278] that prior to producing this washing-machine in 1903 you had produced other inventions and patented them. What other inventions, for example?

A. A paring knife for one, a little curved paring knife. I got a patent on that October 4, 1900, and a peach splitting-machine in 1898; those were the two patents.

The COURT.—What has that got to do with this case?

Mr. LYON.—That just shows he was of an inventive turn of mind and patented other things before that.

Recross-examination.

Mr. CHAPPELL.—Q. Considering your patent I note there are two varieties of machines; the description, as I understand it, of figures 1, 2 and 3 shows a

(Testimony of George E. Grier.)

structure with a revolving drum and the description of figures 4, 5 and 6 shows a drum with a revolving part inside?

A. Yes, they both have that revolving—

Q. —Which of these structures did you manufacture, or did you make both of them?

A. No, we are making one with a revolving shaft with the drum stationary.

Q. What is the size of the inlet pipe leading into that? A. About—

Q. —Or the several pipes that lead into the drum? A. For the water?

Q. Yes. A. I think an inch and a half.

Q. What is the size of the overflow pipe?

A. There are a series of holes overflowing into a box on the side that comes down, a sewer pipe; I would suppose they would represent something like $2\frac{1}{2}$ or 3 inches, in cubic inches or square inches.

Q. How much above the outlet is the intake in elevation?

A. Practically the same I think; I never measured that.

Q. Your patent shows the intake considerably higher than the overflow. What is the condition of the machine—the same elevation?

A. The idea was, inasmuch as the blades went that [279] way, it would take the flow away from the outlet so that you could drop the outlet a little bit and not lose much of your material; that was the idea.

The COURT.—Q. Could do what?

A. There are two plates on this shaft, and you

(Testimony of George E. Grier.)

would not lose much material if you could put that down lower; you could put that outlet lower than the intake where the fruit was coming up. That was the object of placing these pipes that way.

Mr. CHAPPEL.—So that the Court can understand that, please explain the connection.

A. He has reference to this inlet and this as the outlet.

Q. Into the drum? A. Into the drum.

Q. The water?

A. Yes; there is not any material significance attached to that, only that this would drain back to the level here.

Q. The drum is stationary, but the shafting in there turns to the left?

A. Yes, it comes this way; there is just that much difference between the outlet and drain down. Of course here is the sewer pipe at one end, there is no particular significance attached to it, as far as I know.

The COURT.—Is that all with this witness?

Mr. CHAPPELL.—Q. You put on a pump on your machine in 1904? A. Yes.

Q. What was the pressure before and after on the sprays?

A. In 1903 we had about 70 pounds pressure, city pressure, and along about two or three weeks before we shut down the pressure for some reason went down on us, reduced, and we had the water company dig a section around and we run another pipe then from Maringo Avenue to get further pressure, which gave a little relief for a time but

(Testimony of George E. Grier.)

not entirely; it did not entirely relieve us of that trouble; that was the cause of our putting the pump [280] in the next year, we were afraid to depend on the city pressure.

The COURT.—Q. What pressure did you have before and after putting in the pump?

A. That would run it up to 70 or 80 pounds, to keep it steady.

Mr. CHAPPELL.—Q. Your pump would run it up to 70 pounds?

A. Yes.

The COURT.—Q. 70 pounds was sufficient, was it?

A. Yes.

Q. If you could keep the pressure up to 70 pounds, it was sufficient? A. Yes.

Redirect Examination.

Mr. LYON.—Q. Do you know where you bought that pump?

A. Fairbanks-Morse.

Q. When? A. In April, 1904.

Q. Did you ever discover why it was that the water pressure went down at the factory there along late in the fall of 1903?

A. I found that in 1910 or '11 when we put a storm drain on Broadway that the main was cracked and went out, overflowed into a drain of the ice company running down to the Arroyo.

Testimony of C. L. Kennedy, for Defendants.

C. L. KENNEDY, called for the defendants, sworn.

Mr. LYON.—Q. Where do you reside, Mr. Kennedy? A. Lankershim, California.

Q. In what business are you engaged?

A. Canning fruit business.

Q. Were you ever at any time associated with Mr. George E. Grier of Pasadena? A. Yes.

Q. When?

A. In 1903, and the season of 1905 and 1906; I think that was the proper time.

Q. Prior to going into the employ of Mr. Grier where did you reside?

A. I worked at the Pasadena Packing Company's plant, [281] which the Pasadena Canning Company now owns; for two seasons I worked there.

Q. What seasons were those? A. 1900, 1901.

Q. What did you do the next year?

A. In 1902, I worked for the Pasadena Canning Company.

Q. In 1903 what did you do?

A. I worked for the San Jacinto Packing Company of San Jacinto.

Q. That is down south of Los Angeles?

A. Yes; it is in Riverside County, out of Riverside, about 20 miles.

Q. Did you have any knowledge of how any of the fruit was handled by the Pasadena Canning Company in 1902?

A. In what way do you mean?

(Testimony of C. L. Kennedy.)

Q. As to the peeling of peaches?

A. Yes; it was peeled, some of it was peeled by hand and some of it by the lye process.

Q. Just explain what you mean by the lye process in that connection.

A. They had two vats; they were about 2 feet wide and about $4\frac{1}{2}$ feet long, I should judge about 18 inches deep, and one of them was filled up with the lye solution and the other filled up with water, and we dipped them by means of a pulley attached to a crate or basket, and—we lowered two baskets and raised them up and down in the lye and in the water we raised them up and down, and also used the hose on them.

Q. In what form or shape or condition were the peaches?

A. They were in halves; they were freestone peaches; we also tried some whole.

Q. Did you have any conversation with Mr. Grier at that time? A. Yes.

Q. What?

A. He told me to go in there and to look after that and to attend to that work, and to see if we could not devise some means whereby we could peel all of our peaches by the lye process or see if it could be worked out properly and we experimented on it in different ways, by using the lye in different degrees, weak, strong and so forth and different lengths of time in there and watched them to see the different conditons at different times, and in the washing of it to see how we could wash it, shake them up and down in the water, use the hose on them,

(Testimony of C. L. Kennedy.)

and we found we could do it better by halved peaches than by the whole, that is the peach before it was halved. [282]

Q. After using your hose, did you have any subsequent conversation with Mr. Grier with regard to that operation; if so state what Mr. Grier stated to you?

A. We had numerous conversations with regard to the matter and in different ways about how we thought would be the best way to work that. [283]

Q. Go ahead and tell us what was said by Mr. Grier in that connection.

A. The first thing he told me was before I went down there to look into this, he and I had talked it over, and I had heard previously that Mr. Vernon had a machine up at Fresno, and I told him while I was north shipping fruit I had a notion to go over there and see that machine, and he said, "I had a notion to send you there, but did not," and when I came home we talked this over and suggested to one another different ways of doing it. I remember particularly my idea of doing that was to put it in a drum of some kind and roll it around with sprays of water upon it, something like the worm in the old grasshopper, something on that plan, and he did not think that was a good plan; he said his idea was to get them in under the spray somewhere where he could turn them over, agitate them, shake them, and we were talking along about different ways, and he disposed the plan to me which he said he had an idea to make a machine with a shaking device to get

(Testimony of C. L. Kennedy.)

these in under the sprays, shake them and turn them over, to get them on all sides, and he thought my idea would not work, or he thought we could not get the sprays of water upon the fruit.

Q. Now in the year 1903, you say you worked in San Jacinto? A. Yes.

Q. In 104, where did you work?

A. I worked for the Orange County Preserving Company, at Anaheim.

Q. Did they have any machine there for use of the lye process. A. Yes.

Q. Did you have any occasion to see that machine in operation? A. Yes.

Q. Do you know what it was? A. Yes. [284]

Q. Can you describe to us? If so, please do so.

A. It was a machine made by Mr. Grier; it was one of these shaking machines that used the grasshopper, used the caustic soda, and it was run from there on to this shaker machine, which ran it in under the sprays, and washed it off, and then it went down into a tank with an elevator which run up and carried it out—I think there were three of these tanks, perhaps four—three anyhow.

A. In 1903, were you at any time in Mr. Grier's plant at Pasadena? A. Yes.

Q. Do you know anything about whether or not he had any machine there?

A. He had; he had this machine of his laid up, that we had been talking about.

Q. Can you describe the machine as you saw it down there in 1903?

A. As near as I can remember it was the same

(Testimony of C. L. Kennedy.)

identical machine that we had at Orange County Preserving Company in 1904.

Q. You mean one just like it?

A. Yes, one just like it.

Mr. LYON.—You may inquire, Mr. Chappell.

Cross-examination.

Mr. CHAPPELL.—Q. What was your information that enabled you to say that the machine at Anaheim was made by Grier?

A. Well, I was told by the firm that bought it and also because I had seen the machine before, one like it, similar to that, which made me think it was the Grier machine; also, the description that he told me of the way he was going to make the machine.

Q. You inferred that because it was like the other machine, as I understand, but you have no positive knowledge that Grier made the machine?

A. I was told by the company that they bought it from Mr. Grier.

Q. What somebody told you is not anything that you know yourself, [285] is it?

The COURT.—Except that they told him.

A. I did not see the bills, no; I did not buy the machine; I was simply an employee working there.

Mr. CHAPPELL.—You did not go up to Fresno to see the Vernon machine? A. No.

Q. How did you come to know about the Vernon machine in the peach peeling season of 1902?

A. Well, I heard, it was in a general conversation—one way, it was through my brother, who was connected with the Californa Fruit Cannery Associa-

(Testimony of C. L. Kennedy.)

tion, and through different people in the cannery business, we talked it over with; it was general information; I could not say exactly the number of people that told me about it, but it was general information.

Testimony of W. F. Herman, for Defendants.

W. F. HERMAN, called for the defendants sworn.

Mr. LYON.—How old are you, Mr. Herman?

A. 41 years old.

Q. Where do you reside. A. Ontario.

Q. What is your business?

A. Cannery and fruit packing.

Q. Are you acquainted with George E. Grier, of Pasadena, California? A. Yes.

Q. Did you ever at any time work for him?

A. I did.

Q. When?

A. I worked for him the first time in 1902.

Q. Subsequent to that, when? A. In 1903.

Q. In what capacity did you work for him in 1902, and where? A. I was his processor at Pasadena.

Q. At the Pasadena Canning Company?

A. Well, at that time it was not the Pasadena Canning Company; it was called the Pasadena Canning Company, but not a corporation.

Q. You say "processor"; what do you mean by that?

A. I had charge [286] of the cooking-room and warehouse.

Q. Do you know anything about how the peaches

(Testimony of W. F. Herman.)

were peeled in the so-called Pasadena Canning Company plant in 1902?

A. Well, we started the first part of the season peeling them by hand, as we had heretofore, the freestone peaches; during the latter part of the freestone peaches, we did a little experimenting with lye.

Q. In what way? Just go ahead and tell us what you remember of those experiments.

A. We used some lye, a lye solution, fixed it up and dipped some peaches in it, in a wire basket.

Q. The next season you worked for Grier, did you? A. Yes.

Q. That was in 1903? A. Yes.

Q. What time did you go to work for Grier in that year? A. In 1903?

Q. Yes. A. On or about the 15th of June.

Q. Prior to that time, had you been over to the Pasadena Cannery at any time during 1903?

A. Yes.

Q. Did you ever meet a man by the name of W. H. Finley? A. Yes.

Q. When did you first see or meet Mr. W. H. Finley?

A. I think it was about the first of May, 1903.

Q. Where?

A. At the Pasadena Canning Company.

Q. What was he doing then?

A. He was building some tanks.

Q. Did you have any conversation at that time with either Mr. Finley or Mr. Grier in regard to these tanks?

(Testimony of W. F. Herman.)

Mr. MILLER.—We object to any conversation that this witness had with him as immaterial, irrelevant and incompetent.

The COURT.—I think so.

Mr. LYON.—Note an exception.

Q. Do you know what kind of a machine was used by Mr. Grier in the Pasadena Cannery in 1903, in connection with the peeling of peaches?

A. Yes. [287]

Q. Did you have anything to do with the installation or use of that machine? A. Yes.

Q. Please go ahead and tell in your own way what you remember about that machine, or its installation, and its operation during that year.

A. The first work that I did on that machine was to pipe the steam and water to the machine, the piping of steam from what was called the grasshopper, and the water—

The COURT.—Pipe the steam, you say?

A. Yes, the water to some sprays which were suspended over a shaker.

Mr. LYON.—Q. How many grasshoppers were there?

A. One grasshopper.

Q. In that Pasadena machine? A. Yes.

Q. After putting these steam coils in the grasshopper and piping the sprays, what did you do?

A. I turned the water in, and when I turned in the water the grasshopper leaked very badly.

Q. Then what was done?

A. Mr. Grier had some mechanics come and fix the grasshopper.

(Testimony of W. F. Herman.)

Q. What was done with the grasshopper after it was fixed?

A. It was put back and connected up with the water.

Q. Then after that what was done with that machine? A. We used it to peel peaches.

Q. Where?

A. At the Pasadena Canning Company.

Q. Did you have anything to do with the use of that machine during 1903?

A. No, I did not come in contact with it.

Q. You were not employed upon the machine?

A. No.

Q. Did you ever see any other machine like this one that you saw there in the Pasadena Cannery, or work on any other one?

A. There was another one built there, or partly built and sent to the East Side Canning Company in Los Angeles.

Mr. MILLER.—Q. You were asked if you ever saw one. [288]

Mr. LYON.—Q. Did you ever see the other parts that you refer to?

A. I saw the grasshopper, and I saw the tanks made and sent away from there.

Q. Did you ever see the machine at the East Side Cannery? A. Yes, in later years.

Q. Where did you work during the peach season of 1904? A. In Mr. Grier's.

Q. In Pasadena? A. Yes.

Q. What machine or apparatus did they use at the Pasadena Cannery in 1904 for peeling peaches?

(Testimony of W. F. Herman.)

A. The same machine that they did in 1903.

Mr. LYON.—You may inquire.

Cross-examination.

Mr. CHAPPELL.—What was the earliest day that you remember of seeing the peach peeling machine operating at the Pasadena plant?

A. July, 1903.

Q. What makes you think it was July?

A. Because it was used on the freestone peaches; they get ripe down there about the 10th of July, and it was used at the start.

Q. Are you sure that that machine was tested before July 29th?

A. No, I could not swear to that.

Q. You are just giving your general impression, because such peaches got in condition it was used about that time; is that it?

A. The peach season ordinarily starts in Southern California about the 15th of July.

Q. And for that reason you thought that the machine was used at that time? A. Yes.

Q. But your recollection is not clear except you just reason that?

A. I know we used it on freestone peaches.

Q. Do you know what the water pressure was that delivered to the [289] sprays?

A. I know approximately about 75 pounds.

Q. Always remained 75 pounds?

A. No, it varied.

Q. How much did it vary?

A. I could not tell you.

(Testimony of W. F. Herman.)

Q. Do you know why it varied?

A. Because we were on a very small line.

Q. What was done about it?

A. We eventually hooked on to a larger line that went up the street.

Q. Do you remember the form of the shaker.

A. Yes.

Q. Just describe it as near as you can.

A. Well, it had rough places sawn in boards that fitted into the bottom of the tank; the shaker was fastened to arms, to hickory arms that were attached to a tank and shook back and forth on that.

Q. Were those arms spring arms?

A. Yes, hickory arms.

Q. What became of those, do you know?

A. They were afterwards taken off; in later years they used an eccentric.

Q. Was one end of the shaker higher than the other, that is, this part that vibrated?

A. Yes, I think it was a little.

Q. The angle of it gradually from one to the other?

A. Yes.

Q. Was there more than one shaker? A. No.

Q. That is, the pieces dropped on to one end of this shaker, and they were shaken gradually along until they dropped off at the other end; is that right?

A. Yes.

Q. No irregularity in the shaker, that you noticed?

A. There was the little rough places in it that were sawn in the boards.

Q. Did you notice any baffles at the sides of the shaker? A. Yes.

(Testimony of W. F. Herman.)

Q. What was the purpose of those?

A. So as to concentrate the peaches so that the spray would hit them.

The COURT.—What do you mean by little rough places sawed in the boards; wouldn't that tear the peaches? A. No, they were little steps. [290]

Q. How many steps?

A. I could not tell you the number.

Q. More than one?

A. They were small, little angles were sawed in the boards, perhaps an inch, half an inch, and then say three inches again, and they would step down again.

Q. At regular intervals? A. Yes.

Q. Wouldn't these little rough places sawed in the boards tear the peaches as they shook them across?

A. No, I do not think they would.

Q. It did not ruin the fruit? A. No.

Mr. CHAPPELL.—I think that is all.

Mr. LYON.—That is all.

Testimony of Mrs. Alma Grier, for Defendants.

Mrs. ALMA GRIER, called for defendants, sworn.

Mr. LYON.—Q. You are the wife of George E. Grier, of Pasadena? A. I am.

Q. Mrs. Grier, have you had any experience in peach canneries? A. Yes.

Q. From what date did your experience begin?

A. From 1887.

Q. Where was it that you worked in the peach canning business then? A. For Mr. Welch.

Q. Where?

(Testimony of Mrs. Alma Grier.)

A. At the Southern California Cannery, on Main street in Los Angeles.

Q. When did you come to California?

A. In 1886.

Q. In what manner were peaches peeled in the Welch cannery in 1887, when you first went to work there?

A. In a small way they peeled some of the peaches whole by dipping them in a solution of lye, in a kettle, brass kettle, or copper kettle, rather, and then they peeled them by hand also.

The COURT.—Q. What year was that you say?

A. 1887. [291]

Mr. LYON.—Q. When did you first meet Mr. George E. Grier? A. 1891.

Q. Now, after they dipped the peaches into this copper kettle in 1887, what did they do with them?

A. They doused them up and down into another kettle of clear water and then they were given to the girls, one of whom was myself; we trimmed them and washed them; we trimmed and pitted them and they were put into pie fruit and for jam.

Q. When you say, Mrs. Grier, "We trimmed them," just what do you mean?

A. Any spots that might have been left on them, oftentimes there is stuff left on them, fungus or other scale and such things as that, that the solution of lye does not seem to take off.

Q. Now, coming down to 1891, the date that you have just mentioned, where were you employed at that time? A. At the same place.

(Testimony of Mrs. Alma Grier.)

The COURT.—Q. That is, at the Welch Cannery, in Los Angeles? A. Yes.

Mr. LYON.—Q. Who was there besides Mr. Grier and Mr. Welch at that time, if you remember?

A. Mr. E. A. Taylor, Mr. Philbrook, Mr. E. H. Kennedy, Mrs. Welch.

Q. How did they peel peaches there in 1891?

A. They fixed some vats, large wooden vats, and dipped them in lye; they did that very extensively that year, dipped them in lye, and then out of that into another vat, on an iron rack; they used a crane to dip them up and down into the vats, and then they dipped them into another vat of clear water and took them out of that and put them on a truck and turned the hose on them.

Q. What kind of peaches were these—not as to variety, but as the shape of the peach and so forth, whole or halved? A. They were whole.

Q. I show you a photograph and ask you have you seen an apparatus [292] like that before.

Mr. MILLER.—We object to the question as leading and suggestive. I do not know what the photograph is, but certainly it is an objectionable form of question.

The COURT.—The objection is sustained. There is a proper way to examine the witness, Mr. Lyon.

Mr. LYON.—I understand. I think your Honor fully understands her explanation of this matter anyway.

Q. When did you and Mr. Grier go to live at Pasadena? A. In 1902.

(Testimony of Mrs. Alma Grier.)

Q. That year, in what business was Mr. Grier engaged?

A. In the canning business.

Q. With whom? A. With Mr. E. A. Taylor.

Q. In what name?

A. The Pasadena Canning Company.

Q. Now, at the Pasadena Canning Company in 1902, how were the peaches peeled? First, you worked in the cannery that year, did you?

A. Yes.

Q. Then answer the question.

A. In 1902 we peeled them with a paring knife of Mr. Grier's, knives called the Pomona patent peeler, part of the time, and we experimented by dipping them in lye and washing them with the hose and putting them in the water, and doing different things, just for experiments.

Q. You say "we" did that. Who do you mean?

A. Myself and Mr. Grier and Mr. Kennedy, Mr. Clarence Kennedy, and Mr. Herman, a number of us.

Q. During that season, did you have any conversation or conversations with Mr. Grier in regard to the peeling of peaches with lye? A. Yes.

Mr. MILLER.—We object to the conversation as immaterial, irrelevant and incompetent.

Mr. LYON.—It is the same objection that we argued. [293]

The COURT.—No, I do not think so. I think that is a different thing. That is too general.

Mr. LYON.—I do not want to lead her. It is only

(Testimony of Mrs. Alma Grier.)

preliminary, so far as that is concerned, that end of it.

The COURT.—It is a very easy thing to ask her if she had any conversation about the method of peeling peaches. You are leading her when you say with lye.

Mr. LYON.—Q. Did you have any conversation with Mr. George E. Grier during the season of 1902 in regard to the method of peeling peaches?

A. A number of times, yes; it was a common conversation all the time; it was something we were vitally interested in.

The COURT.—You have answered it. I would not go on; wait until he asks you, Madam.

Mr. LYON.—Can you give us the substance of this conversation?

Mr. MILLER.—I object to that as immaterial, irrelevant and incompetent.

The COURT.—I will see what it is, whether it falls within my ruling; if it does it will say, otherwise not.

A. Before that, Mr. Grier spoke to me about making a machine, and this is what we were planning and working on, and he said that he was going to build a machine that would take the place of knives and such things as that, and that would peel peaches by the ton instead of by the box and by the piece, and many evenings we would draw plans and figure on how and what we would work on, how we would make the machine; in fact, almost every evening, every day he talked about it.

(Testimony of Mrs. Alma Grier.)

Mr. LYON.—Q. Can you remember any specific conversation in regard to any specific kind of machine during 1902? [294]

A. I do not believe I could tell you word for word anything that was said.

Q. Now, during the season of 1903, Mrs. Grier—

Mr. MILLER.—One moment, before you go to that, I submit the evidence in regard to the conversation she has just detailed in 1902 is incompetent, and should go out.

The COURT.—It will go out.

Mr. LYON.—In 1902, in any manner, did Mr. Grier disclose to you in a general way what kind of a machine he proposed to build?

The COURT.—She just said she did not remember.

Mr. LYON.—She said she could not give the conversation word for word.

The COURT.—She said she could not remember anything specifically.

Q. Do you remember anything more than you have stated?

A. Well, yes, I do remember that Mr. Grier spoke about getting what they called a grasshopper.

Q. A scaldier?

A. That was the lye bath, the grasshopper, and then washing them with water, and one evening I remember saying that I thought the peaches should be put into something that would whirl them around.

Q. Agitate them? A. Yes.

Q. That was your suggestion? A. Yes.

Q. A pretty good suggestion, too?

(Testimony of Mrs. Alma Grier.)

A. Another time Mr. Grier spoke about washing them with a spray, and at that time he drew up a plan of—a little plan or a little sketch of what he thought would work out.

Q. Now, describe that.

A. He drew it on the desk, just drew a little square, and as he drew it he told us this was where [295] the peaches would land, and this was where the pipes would be that the water would go through, and this one special time, I do not remember that he spoke of putting the nozzle on—this time I do not remember him saying anything about it at all, but another time later he drew out a plan on paper, or I believe it was on a blotter on the desk in the office, and said that he would put some nozzles on this pipe, and turn the water on over the peaches.

Q. Did he keep that sketch?

A. No; I believe that was drawn on a blotter on the desk, if I remember right; very often, in the evenings, we would sit in the office at the factory—we had apartments above the factory—and we would sit there in the evening and talk over these things and plan what we were going to do, what we expected to do.

Mr. LYON.—Q. Did you work in the Pasadena Canning Company's factory at Pasadena during the peach season of 1903? A. Yes.

Q. You lived at that time and during that spring in the factory building, did you?

A. In the apartments above the factory, yes.

(Testimony of Mrs. Alma Grier.)

Q. Do you know what was used in 1903 there for peeling peaches? A. Yes.

Q. Please tell us.

A. What we call a "Liza Jane"; it was a grasshopper, a shaker, and three tanks, that the peaches went into from the grasshopper, three tanks of fresh water; the shaker had several nozzles over it, I could not say just how many, and it shook back and forth in this way, and the fruit was shaken off into the first tank; from that tank it was carried into the second tank by the draper; it was built of iron slats, and had little slats that carried the fruit into the next tank.

Q. How often did you see that machine there, Mrs. Grier?

A. It would be very hard to say, because I was there all the time.

Q. Was that machine ever used there at any other time than the [296] year 1903? A. Yes.

Q. What years? A. Up till 1914.

Q. Did you ever see any other machine like that? A. Yes.

Q. Do you know where? A. Mr. E. A. Taylor's.

Q. Where was that?

A. Los Angeles, in the East Side, on Avenue 21, I believe, I am not sure of that.

Q. At the East Side Canning Company?

A. Yes.

Q. Will you look here in the courtroom and see if there is any part of any of this machine here present, if you remember?

(Testimony of Mrs. Alma Grier.)

A. The shaker is there, with the spray pipes.

Q. You mean Defendant's Exhibit "K"?

A. That is the shaker

Q. You saw that machine in use at Taylor's East Side Cannery in Los Angeles, did you?

A. I don't think I ever saw that in use; I saw it when it was there; I don't think I was ever there when the cannery was running; I generally was home at our own factory.

Q. To what extent in 1903 was this machine used in the Pasadena Cannery plant?

A. All except about 8 or 10 ladies who could not work in the water, and one or two crippled ladies that did peeling by hand.

Q. Now, how does this shaker that you have identified here in the courtroom as being from Taylor's East Side Canning machine compare with the one that your husband had in the Pasadena Cannery in 1903?

A. It is just the same, I could not tell the difference.

Mr. LYON.—You may inquire, Mr. Chappell.

Cross-examination.

Mr. CHAPPELL.—After 1891 where did you see lye peeling of peaches next?

A. In the Pasadena Canning Company,—after 1891?

Q. After 1891?

A. In 1892, I saw it at Welch's cannery, but after that I saw it at the Pasadena Canning Company next. [297]

(Testimony of Mrs. Alma Grier.)

Q. Did you see the canning work each year between those two periods? A. Yes.

Q. Where did you see it? A. In Pomona.

Q. What plant or plants?

A. At G. H. Waters Canning Company, or Pomona Canning Company—G. H. Waters Canning Company.

Q. Were you employed in any of those places?

A. Yes.

Q. Took part in the work so that you would know exactly what was being done? A. Yes.

Q. State any objection that you know of to the matter of lye peeling as it was practiced at the Welch plant?

A. Well, the main objection we had to it, we did not get the lye out of it, or off of it, so that it could be handled.

The COURT.—Q. Off the fruit?

A. Off the fruit, yes.

Mr. CHAPPELL.—Q. Was it used on the high-grade goods at that place? A. At Welch's?

Q. Yes. A. No.

The COURT.—They processed those by hand?

A. Yes.

Mr. CHAPPELL.—The high-grade goods were peeled by hand always until the season of 1903, so far as you know?

A. So far as I know, yes.

Q. Was there any particular saving accomplished by the method adopted in 1903 at the Pasadena plant?

(Testimony of Mrs. Alma Grier.)

A. We thought there was, because we could get more fruit through.

Q. It saved the expense of the hand-peelers, did it not, so far as you observed?

A. I never figured that out.

The COURT.—Q. In what regard did it save, then. You say that you regarded it as a saving.

A. Well, in time we could get more quantity through.

Q. A larger quantity through in a given time?

A. Yes.

Q. You used just the same number of hands, did you, or more? [298] A. We used more.

Q. To handle it? A. Yes.

Mr. CHAPPELL.—Q. Did you peel the high-grade fruit by the lye method in 1903? A. Yes.

Q. Did you peel high-grade fruit by the lye method in 1902 at the Pasadena plant?

A. Yes, we experimented on high-grade fruit.

Q. The principal peeling done that year was with Mr. Grier's improved knife, was it? A. Yes.

Q. The object of the knife was to cut a thin peel from the peach? A. Yes.

Q. Did you ever set any other lye-peeling machines than those made by Mr. Grier that you have mentioned? A. Yes. I saw one at Lankershim.

Q. When did you see that?

A. I don't just exactly know when, but several times when I happened to be there at the factory.

Q. That was this same style of machine?

(Testimony of Mrs. Alma Grier.)

A. Not the same as Mr. Grier's, no; it was not the same as Mr. Grier's; there was a drum.

The COURT.—Q. How do you mean a drum?

A. A big round drum where the fruit went in; I could not explain it.

Mr. CHAPPELL.—Q. When did you see that, before or after you saw Mr. Grier's machine?

A. Afterwards.

Q. Mr. Grier's machine had been used previously, had it, or don't you know? A. Where?

Q. At Lankershim. Is that the name of the place?

A. I don't know.

The COURT.—What year was this that you speak of seeing the drum machine?

A. I saw that several times; I have been to this factory several years at different times. [299]

Q. The first year that you saw that machine with the big drum, that you say was different from Mr. Grier's machine, when did you first see that?

A. I think it was in 1913; I would not say for sure.

Q. That was the first time?

A. As I remember; I am not sure that was the first time; I am not sure that was the year.

Mr. CHAPPELL.—Were you ever at the Welch plant after 1892? A. No.

Mr. CHAPPELL.—That is all.

Redirect Examination.

Mr. LYON.—Q. Mrs. Grier, you stated that the trouble with the lye process at Welch's factory in Los Angeles in 1891 and 1892 was that you did not

(Testimony of Mrs. Alma Grier.)

get enough of the lye off. Not enough off of it for what?

A. Not enough for to handle it—not enough so that it was considered sanitary.

Q. Just one more question in that connection: You are familiar with this lye process that has been used for the last number of years, I believe, in the cannery? A. Yes.

Q. What effect has the greenness of the fruit in connection with the removal of the peel by the lye process?

A. Well, the greener the fruit, the better the fruit, the more fruit there is when it comes out at the end of the line; if it is very ripe, the spray washes it away, washes the fruit away as it comes through.

Q. In case of sun-burn spots and so forth on the peach, are those removed by the lye process?

A. No.

Q. What do you have to do in that regard?

A. They have to be trimmed or put back through the lye bath again.

Q. That is true to-day with all the machines?

A. Yes. [300]

Testimony of G. C. Waterhouse, for Defendants.

G. C. WATERHOUSE, called for the defendants, sworn.

Mr. LYON.—Q. Mr. Waterhouse, where do you reside?

A. Chino, California.

Q. What is your present business?

(Testimony of G. C. Waterhouse.)

A. I am the manager of a school for boys.

Q. I believe you are a son of ex-Mayor Waterhouse of Pasadena? A. I am.

Q. Were you ever acquainted with George E. Grier, of Pasadena? A. Yes,

Q. Did you ever work in the Pasadena Cannery for Mr. Grier? A. I did.

Q. In what capacity?

A. In several capacities; I started as tray boy.

Q. What do you mean by tray boy?

A. Carrying trays for the packers and for the peelers, and so forth.

Q. In what season did you work there?

A. I worked there in 1902, when I first went to work, and worked there for three years, three summers.

Q. During any of those summers, or during those seasons, did you have anything to do with the peeling of peaches? A. Yes.

Q. What?

A. Carrying the peaches from the end of the machine to the packers or packing-table.

Q. What machine? A. The peeling-machine.

Q. Can you describe that peeling-machine?

A. Yes.

Q. Please do so.

A. Well, the front end of the machine was a large hopper; it was high enough so that the man who placed the fruit into the hopper had to stand on a box to do it comfortably, and as I remember it, one

(Testimony of G. C. Waterhouse.)

side of the machine was sort of on an angle of about 45 degrees, and there was a sort of swivel machine [301] inside of the container that was perforated with holes that would bring the fruit up to the other end of the machine, where it would drop out through—I don't remember about the size of the apertures, but quite a large opening where the fruit would drop out onto what we call a rocker, a rocker or a sort of shaker, and this rocker would shake back and forth, and there were sprays, sort of garden sprays, and they could regulate the force of the *cold* water that would go on to the fruit as it came out of this hopper, and that fruit would gradually shake forward until it stepped down a few steps on this rocker until it finally would come into a vat or tank which had an endless chain, a flat chain, with sort of notches that would engage the fruit and bring it up and dump it into another vat, and so on until it arrived at my end of the machine.

Q. Your business, then, at the end of the machine, was to take the peaches after they had gotten through the last *basket* or tank and carry them to the packer: Is that it? A. Yes.

Q. How many years were you there while they were running that machine?

The COURT.—He said three.

Mr. LYON.—He said he was at the factory only three years.

The COURT.—He said he was at the factory three years from 1902.

(Testimony of G. C. Waterhouse.)

Mr. LYON.—Q. How many of those years did they have that machine there?

A. Two years.

Q. Do you know what the capacity of this machine was in regard to how many peaches you could run through it in a given time?

A. It depends on how many were stuffed in the front end of it; we had a contest, I believe, there one day, and I believe we put through about a ton of peaches in ten minutes. [302]

Mr. LYON.—That is all; you may inquire, Mr. Chappell.

Cross-examination.

Mr. CHAPPELL.—Q. Do I understand correctly that that machine was there when you went there in 1902? A. No.

Q. When did you first see it?

A. I do not know just when—the second year I was there is the first time I saw the machine or got acquainted with it.

Q. What month did you go there in that second year, 1903?

A. I could not tell you exactly the month; it was around the close of the school year; I was in school at the time.

The COURT.—Q. What time did school close?

A. I believe in June; I went to work there permanently then, that is, for the summer season.

Mr. CHAPPELL.—You think you went to work there in June and saw the machine in operation there in June?

(Testimony of G. C. Waterhouse.)

A. I could not say ; it was during that season that I worked on the machine, and took the fruit away ; I don't remember just the time that we started to peeling the peaches.

Q. When did the contest occur when you put through a ton in ten minutes ?

A. I could not tell you, during that summer some time.

Q. Were these high-grade peaches ?

A. I could not tell you ; I used to eat a good many of them, but I don't know just what grade they were.

Mr. CHAPPELL.—That is all.

Mr. LYON.—That is all. [303]

Testimony of Edward A. Taylor, for Defendants.

EDWARD A. TAYLOR, called for the defendants, sworn.

Mr. LYON.—Q. Where do you reside, Mr. Taylor ?

A. 230 North Avenue Nineteenth, Los Angeles.

Q. In what business are you engaged ?

A. Fruit canning.

Q. How long have you been in that business ?

A. Since 1897, for myself.

Q. Prior to going into business for yourself, had you been connected with the fruit canning industry in Southern California ? A. Yes.

Q. With what concern ?

A. What was then the Southern California Packing Company.

Q. Under whom ?

A. Mr. Welch was superintendent of it, the manager.

(Testimony of Edward A. Taylor.)

Q. About what years were you under Mr. Welch?

A. From 1890, I believe, until 1896.

Q. How did they peel peaches in that cannery during the years 1890 and 1891 and 1892, for example?

A. Small peaches were peeled by lye process, but the larger ones by hand.

Q. Please tell us what you mean by the lye process in that connection.

A. The peaches were dipped in a solution of lye, to take the skin off of them.

Q. After they were dipped in the lye, what was done with them?

A. They were taken out and put into water.

Q. Did that remove the skins? A. Yes.

Q. Were they whole or halved peaches?

A. Whole peaches, at that time.

Q. After leaving the Southern California Packing Company in 1896, with whom did you go in business?

A. F. S. Stetson.

Q. Of Los Angeles, California? A. Yes.

Q. How did you peel peaches when in business with him?

A. The [304] small peaches were peeled with lye.

Q. How did you handle your lye with the peaches?

A. The lye that we used there we kept in kettles right alongside of one another; in a big large kettle we put the lye, the first one, and the second one was smaller, with a little lye in that, with a hole in the bottom of it, and the third one, a larger one, we had water in.

(Testimony of Edward A. Taylor.)

Q. Hot water?

A. No, cold water. From scalding it in the first tank, it was set over this second one, and with a hose we washed it, the end of it made a spray, and washed the skin off of the peach, and then from that they were put into this cold water, then into a tub and turned into the cutter.

The COURT.—What do you claim for this evidence?

Mr. LYON.—The historical part of it, to show there is no novelty in the lye process, and that end of it.

The COURT.—I do not suppose they would claim for a minute there is. The subject of this patent is a combination, is it not?

Mr. LYON.—A supposed combination.

The COURT.—It is a combination, and held to be a combination.

Mr. LYON.—We will assume that it is a combination.

The COURT.—Yes. What is the value of this evidence at this time? All of the elements are supposed to be old.

Mr. LYON.—That is the last question I was going to ask the witness in that regard, anyway.

Q. Coming down to subsequent years, were you ever in any manner connected with Mr. George E. Grier, of Pasadena? A. Yes.

Q. In what capacity?

A. I was his partner for five years.

Q. In what business? A. Canning business.

(Testimony of Edward A. Taylor.)

Q. Where? [305]

The COURT.—What year?

Mr. LYON.—Q. What year?

A. 1902, till the fall of 1906.

Q. That was at the Pasadena Cannery?

A. Yes.

Q. Did you ever at any time discuss with Mr. Grier the peeling of peaches? A. Yes.

Q. In what manner?

A. It was in August, 1902, that I first discussed the peeling of peaches in halves.

Q. Give us the conversation that you had at that time.

A. In August, one evening, probably between four and five o'clock, I had a lot of cling peaches all cut ready to peel, and my cutters at that time had been working hard, and they refused to peel any more that evening, so that I thought I would put them into the lye and see if I could peel them, the same as I did the whole peach, which I did, and washed those—instead of putting them into three tubs, after moving them out from the lye, I set them across the tank and washed them all out with the hose, and by the time I had them through Mr. Grier happened along there.

Q. Give us the conversation that you had with Mr. Grier at that time.

A. I asked Mr. Grier if he did not think that was a good thing, and he said he thought it was; he said, after they were cooked, he would like to see the peaches; about two days afterwards he came in and

(Testimony of Edward A. Taylor.)

I went and got a can and opened it in the office and showed him, and I can remember now the smile that came over his face.

Q. Now, then, Mr. Taylor, after that did you ever hear anything of a Grier machine?

The COURT.—What is the object of this, to prove that smile of Mr. Grier's?

Mr. LYON.—No; coming down to the next year, that is the year 1903, how did you peel peaches there that year?

A. I peeled [306] them with that machine that sets out there, that Mr. Grier made.

Q. Defendant's Exhibit "K" is a portion of it?

A. Yes; that appears to be the first machine and the only machine that I ever used in peeling peaches.

Q. Do you know whether that machine still exists, the rest of it? A. It does, yes.

Q. Was it photographed for the purpose of an exhibit in this case? A. Yes.

Q. For how many years did you use that machine, practically, in the peeling of peaches?

A. Every year except two, from 1903 to the present time—in 1909 and 1914 I did not use it, for I did not can those two years.

Q. You did not do any canning in your cannery in those two years?

A. No, no peaches in 1909 and 1914.

Q. I show you photographs, Defendants' Exhibits B-1 to 8, attached to the stipulation in this case, and ask you if you know of what those are photographs?

A. I should say that they were photographs of my

(Testimony of Edward A. Taylor.)

machine, what I call the scalding and the shaker, and the next one with water.

Q. Mr. Taylor, when you first took this machine into your place, how was the water connected?

A. You mean the pressure?

Q. Yes.

A. The pressure was very low; we tried it for two or three days and we could not use the water in the other part of the house, because it made it so weak.

Q. You say you tried it two or three days; you mean in the actual operation of the machine?

A. Yes.

Q. Then what did you do?

A. I bought a pump.

Q. Of whom did you buy such pump?

A. The Baker Iron Works.

Q. Was that pump installed in this machine, then?

A. It was; yes.

Q. Is that the pump that is shown in the photograph? [307]

A. It looks like it; I should say it was.

Q. I show you a paper, and ask you if you have ever seen it before. Do you want to see it, Mr. Miller?

Mr. MILLER.—What is it?

Mr. LYON.—It is the original bill for the pump.

Mr. MILLER.—No.

A. Yes, I have seen that before.

The COURT.—Has it been paid?

A. Yes; it is the bill for the pump with some other stuff.

(Testimony of Edward A. Taylor.)

Mr. LYON.—This is the original bill of August of 1903 for the pump that you refer to?

A. Yes.

Mr. LYON.—We offer it in evidence.

A. I had other bills and that was paid by a statement.

Q. You mean at the end of the month; this is the invoice for it? A. Yes.

The COURT.—You paid for it by remitting the money? A. By check.

Mr. LYON.—Q. During 1903, were you at any time in the Pasadena Cannery? A. Yes.

Q. During the peach peeling season? A. Yes.

Q. How were they peeling peaches there that season?

A. The same as I was at my place, with the machine.

Q. How did the machine at the Pasadena Cannery compare with the one that you had at the East Side Cannery, and as shown in these photographs?

A. They were identical.

Q. Do you know how many seasons that machine was used at the Pasadena Cannery?

A. No, I could not say; it was used until after I sold out to Mr. Grier; I never saw any other one there.

Q. Do you know whether any other concerns used one of these Grier machines like this? A. Yes.

Q. What company?

A. The Orange County Preserving Company, at Anaheim. [308]

(Testimony of Edward A. Taylor.)

Q. How do you know that?

A. Because I was a partner there at the time.

Q. For how long was that machine used in peeling peaches at the Orange County Preserving Company at Anaheim?

A. They used it for three years, and then they quit peeling peaches.

Mr. LYON.—You may inquire.

Cross-examination.

Mr. CHAPPELL.—Q. What was the earliest date on which you saw a peeling-machine used, if you remember definitely?

A. A peach-peeling machine?

Q. Yes, one of these that was made by Mr. Grier in 1903? A. The first of August.

Q. You think it was not earlier than that?

A. I don't remember seeing it any earlier; the peaches were late that year, I know.

Q. Were any considerable quantity of peaches peeled by the lye process by you in 1902?

A. About 300 tons.

Q. Were these high-grade peaches, all of them?

A. No.

Q. Did you work at peach-peeling between the year 1892 and 1902? A. Yes.

Q. Where did you work at peach-peeling?

A. Southern California Packing Company.

Q. Where?

A. I was with the Southern California Packing Company from 1891 until the fall of 1896, and in 1897 and 1898 I was in company with Mr. F. S. Stet-

(Testimony of Edward A. Taylor.)

son—F. S. Stetson and Company was the name of the firm.

Q. To what extent was the lye process used at this place? A. Peeled all the small peaches.

Q. You did not peel any high-grade goods?

A. No. The first high-grade that I ever saw peeled was at my place in August, 1902.

Q. August, 1902?

A. Yes, but only a few at that time. [309]

Q. That was the experimenting that you made there, I believe? A. Yes.

Mr. CHAPPELL.—That is all.

Mr. LYON.—I want to call your Honor's attention for just a moment in passing, while you have it fresh in your mind, to the fact that this invoice for this pump contains this notation at the bottom, that it was delivered August 3, 1903; that is a part of the original invoice.

The COURT.—We will take an adjournment now until to-morrow.

(An adjournment was here taken until to-morrow, Friday, March 31, 1916, at ten A. M.)

[Endorsed]: Filed Oct. 10, 1916. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [310]

*In the District Court of the United States for the
Northern District of California, Second Di-
vision.*

Before Hon. W. C. VAN FLEET, Judge.

IN EQUITY—No. 201.

DUNKLEY COMPANY

vs.

CENTRAL CALIFORNIA CANNERIES.

Friday, March 31, 1916.

Counsel Appearing:

For the Plaintiff:

FREDERICK L. CHAPPELL, Esq., JOHN
H. MILLER, Esq.

For the Defendants:

FREDERICK S. LYON, Esq., WILLIAM K.
WHITE, Esq., KEMPER B. CAMP-
BELL, Esq.

Testimony of Mary E. Mayes, for Defendants.

MARY E. MAYES, called for the defendants,
sworn.

Mr. LYON.—Q. Where do you reside, Miss
Mayes? A. Pasadena.

Q. Are you acquainted with Mr. George E. Grier?

A. Yes.

Q. Did you ever work for him?

A. I worked for him 14 years.

Q. When did you first work for him?

A. In 1902 I began.

Q. Where? A. In Pasadena.

Q. At the Pasadena Canning Company?

(Testimony of Mary E. Mayes.)

A. Yes.

Q. What was your position or employment in 1902? A. I was checking lady.

Q. Just what do you mean by checking lady.

A. Well, when the girls or boys got through their boxes of fruit I checked them; they had cards and I would check their cards. [311]

The COURT.—Q. You say you worked for Grier 14 years? A. Yes.

Q. Between what period?

A. Between 1902 and 1916.

Mr. LYON.—Q. Did your position during those years give you occasion to observe the method used in peeling peaches? A. Yes, some.

Q. Can you tell us the method used in the Pasadena Cannery by Mr. Grier in peeling peaches in 1902? A. They peeled them with a knife mostly.

Q. You say "mostly"?

A. Yes, they experimented a little with the lye in 1902.

Q. Just tell us what in 1902 they did with the lye—how they used it and what you observed.

A. I was there once or twice; of course I was not expected to be in that part of the room, but I was interested, and I saw them dipping the fruit in the lye and then afterwards washing it with the hose.

Q. Now, after that you worked the season of 1903?

A. Yes.

Q. During the peach season? A. Yes.

Q. What method did they use for peeling peaches in that cannery in 1903?

(Testimony of Mary E. Mayes.)

A. They had a new machine, with a Grasshopper, it was called.

Q. Can you describe that machine to us generally, how it was arranged to operate, how it peeled the peaches?

A. The fruit was put in the hopper and then it came out on the shaker and as it was shaken along the nozzles of water, the fruit was passed along and the lye and the skins were washed off and then it passed on into vats of clean water, three vats, and then it was taken to the tables to be canned after that.

Q. Now, in the next season how long were you at that cannery? A. In 1904?

Q. Yes.

A. I was there in August and on the 6th of September [312] I went East to the World's Fair.

Q. How long was this machine used in that Pasadena Cannery, how many seasons?

A. They commenced to use it in 1903 and they have used it ever since until the last year.

Mr. LYON.—You may inquire, Mr. Chappell.

The COURT.—You say they used it ever since?

A. They have used it; they have a new machine now.

Q. They have a new machine, you say?

A. Something new; it was not just the same as they had the other years.

Q. When did they get the new machine?

A. Last year.

(Testimony of Mary E. Mayes.)

Cross-examination.

Mr. CHAPPELL. — Q. Did you notice any changes at any time in the machine before last year?

A. No.

Q. Didn't they change the wooden supports at the side for metal supports?

A. I could not tell that; I was not in that part of the building so often, so I could not tell.

Q. Did you notice any steps in the shaker at any time? A. No.

The COURT.—I do not think that you need to cross-examine much; this witness' testimony is not material; I would not take time with it; it is all right so far as it goes, but I mean it is so fully covered by other evidence I would not waste time.

Mr. CHAPPELL.—I think that is all.

The COURT.—I would not put in any more evidence of this character; it does not add anything to your case at all.

Mr. LYON.—We only want to prove by Mr. Stetson the use of the East Side machine in 1903.

The COURT.—I mean the mere general statements here such as this witness has given, that they experimented with the lye in 1902 and that they had this machine in 1903. It does not add [313] anything to your case at all.

Testimony of F. F. Stetson, for Defendant.

F. F. STETSON, called for the defendant, sworn.

Mr. LYON.—Q. Where do you reside, Mr. Stetson? A. In Los Angeles.

Q. In what business are you engaged?

(Testimony of F. F. Stetson.)

A. I am proprietor of one of the smaller canneries in the South.

Q. How long have you been in the canning business? A. Since about 1890.

Q. Are you acquainted with Mr. E. A. Taylor of Los Angeles? A. I am, yes.

Q. How long have you known him?

A. Since about 35 or 40 years.

Q. Ever in business with him? A. Yes.

Q. In what business? A. Canning business.

Q. Were you ever in his East Side Canning plant on North Avenue 19, in Los Angeles? A. Yes.

Q. Do you know how he peeled peaches in that plant? A. Yes.

Q. He peeled them with lye using the machine known as the Grier machine, made in Pasadena.

Q. When did he first use that machine?

A. 1903, I believe.

Q. Can you describe that machine to us?

A. Why yes, after a fashion; you mean the whole operation beginning with the lye machine?

Q. The lye machine, the one you called a Grier machine just now.

A. The lye machine is not a Grier machine, that is a common grasshopper machine that they use for the lye process.

The COURT.—Q. Describe the Grier part; I do not care about the lye process.

A. The Grier part, the peaches were discharged upon a slanting table having little uneven places, I [314] don't know how to describe them; that is the

(Testimony of F. F. Stetson.)

machine over there; I have seen the machine.

Mr. LYON.—Q. You mean this device over here in the courtroom, this Defendant's Exhibit "K"?

A. Yes, that is the machine that I saw; is that a sufficient description?

The COURT.—Yes, that is a sufficient description; you need not go ahead and repeat that.

A. That is the machine I saw—something similar to that; I don't know that that is the same machine.

Mr. LYON.—How many years did you see this machine with the jets of water above this shaker device which you have identified in use by Mr. Taylor?

A. Ever since that time; he has used it nearly every year since 1903.

Q. Were you ever in Mr. Grier's plant in Pasadena? A. Yes.

Q. Do you know how he peeled peaches there?

A. He used the same device.

Q. Do you know when he first commenced using such a device?

A. I think in 1903, but I am not sure.

Cross-examination.

Mr. CHAPPELL.—Q. You say you think 1903; what leads you to think that?

A. I installed a machine of my own in 1905 and I am practically certain that he had his two years before I put my own in; I have no documentary evidence in regard to his machine, but I have in regard to my own.

(Testimony of F. F. Stetson.)

Q. Was yours the same kind of a machine?

A. No.

Mr. CHAPPELL.—That is all.

Testimony of Frank H. Sanborn, for Defendant.

FRANK H. SANBORN, called for the defendant,
sworn.

Mr. LYON.—Q. Where do you reside, Mr. Sanborn? A. In Los Angeles. [315]

Q. In what business are you engaged?

A. I have retired from business.

Q. Are you acquainted with Mr. E. A. Taylor?

A. Yes.

Q. And with Mr. Stetson? A. Yes.

Q. Did you have any business connection with either of them? A. I have worked for them.

Q. Where?

A. In the cannery of E. A. Taylor and F. F. Stetson, commencing 1897.

Q. How long did you continue to work for either of them?

A. Well, while E. A. Taylor and Stetson were together, for about one year; I was absent for two years, or one year, in the United States Army and was then with Mr. F. F. Stetson who continued the business there, until about 1906.

Q. The Stetson plant was then in Los Angeles?

A. Yes.

Q. How far from the East Side Cannery of Mr. Taylor? A. About two blocks.

Q. How long were you in Mr. Taylor's cannery?

A. Three years.

(Testimony of Frank H. Sanborn.)

Q. Do you know what kind of process Mr. Taylor used in peeling peaches in his East Side Cannery in Los Angeles? A. Yes.

Q. Please explain to us such process.

A. At different periods he used different processes; at what time time do you wish me to commence? When I first knew him?

The COURT.—Q. When did you first go there?

A. I first worked for Mr. Taylor about 1912; I worked for Mr. Stetson in 1906; I was back and forth between the two places.

Mr. LYON.—I believe you stated that you had worked for them in 1896 and 1897.

A. In 1897 for E. A. Taylor and Mr. Stetson; they were together at that time; they were partners.

Q. Now for whom did you work in 1901, 2, 3 and 4? A. Mr. Stetson.

Q. Were you in Mr. Taylor's Cannery during any of those years? [316] A. Yes, a great deal.

Q. What process of peeling peaches did Mr. Taylor use during those years?

A. In 1901, 2 and 3, he used a lye process of peeling peaches.

Q. Tell us what that process consisted of and how it was working at that time.

A. In Mr. Taylor's cannery?

Q. Yes.

A. They had tanks, wooden tanks—

The COURT.—Q. That was 1901, 2 and 3, you say?

A. Yes. The peaches were dipped into a tank and

(Testimony of Frank H. Sanborn.)

scalded and then into another tank and washed and so on until they were through several tanks.

Mr. LYON.—Q. At any time was that process changed? A. In 1903.

Q. What was the change made at that time?

A. In 1903 they put in a machine and that scalded the peaches and it went from that into a line of tanks or a line of tanks and carriers they were washed.

Q. After leaving the scalding-tank do you remember what was the first part of the machine after that?

A. Leaving the scalding-tank they went on to a washing arrangement with sprays.

Q. Just describe that washing arrangement and the location of the sprays and how it operated at that time.

A. Coming from the scalding it went on to a platform, a cradle arrangement.

The COURT.—Q. Did it look anything like that thing over there?

A. Yes, that is the style of arrangement it went on.

The COURT.—That is enough; there is no use of piling up evidence and getting a repetition of the matter.

Mr. LYON.—That is all, Mr. Sanborn.

Mr. CHAPPELL.—No cross-examination. [317]

Testimony of E. H. Kennedy, for Defendant.

E. H. KENNEDY, called for the defendant, sworn.

Mr. LYON.—Q. Where do you reside, Mr. Kennedy? A. Los Angeles.

Q. Have you ever been connected with the canning industry in any manner? A. Yes.

(Testimony of E. H. Kennedy.)

Q. For how long?

A. For about 25 years.

Q. Were you ever connected with the California Fruit Canners Association in any manner?

A. Yes.

Q. Where? A. Los Angeles.

Q. When? A. From 1900 to 1903.

Q. During 1903 what were your duties?

A. Superintendent.

Q. Of what cannery?

A. Of the Los Angeles branch of the California Fruit Canners Association.

Q. Were you superintendent of that cannery for more than one season? A. No.

The COURT.—Q. I thought you said from 1900 to 1903.

A. It was only one year I was superintendent.

Q. 1900 to 1903? A. No.

Q. That is three years?

A. I was employed in other capacities.

Mr. LYON.—Q. During the season of 1903 at that Los Angeles Cannery of the California Fruit Canners Association do you know what process was used in peeling peaches? A. In 1903?

Q. Yes. A. Yes.

Q. Just describe it.

A. What was known as the Vernon Peeling-machine; it consisted of a combination of several machines for peeling and washing peaches, there first being a grasshopper machine which contained a tank for containing the caustic soda solution for disinte-

(Testimony of E. H. Kennedy.)

grating the peel; the cut peaches or halved peaches were poured into the hopper and by the screw in the [318] grasshopper taken from the solution and elevated up and discharged out of that machine with the peels disintegrated; from this machine they fell into a tank of water and this tank had a conveyor made out of chains and slats that conveyed it out of that into another smaller tank; it went into that tank and was conveyed out of that but as it went up this second incline right at the end, we had a water-pipe running diagonally across the *draper* chain for spraying the peaches, washing them, which was quite effective, but it only reached one side of the peaches, the under side not being touched at all. The fruit was discharged from this fraper on to an elevator and elevated up about 4 feet high and at the top there we had a device for separating the peaches into three different runways, and the fruit fell on to three different belts, each belt running parallel between brushes; right over these brushes were water-pipes for spraying the fruit and the brushes, and when they came out from the end of this runway, they were discharged into another cooling-tank, a facsimile of the first two tanks, and discharged from this tank on to a belt which carried the peaches to a packing-table.

Q. Do you know where the brushes or the washing-machine that you have referred to were secured?

A. Well, I don't know where it was secured; I know where it was made.

Q. Where was it made?

(Testimony of E. H. Kennedy.)

A. In Glendora by the H. K. Miller Manufacturing Company.

Q. By whom was this apparatus assembled or put in condition in that packing-house in 1903?

A. Under my direction.

Q. I show you Defendant's Exhibit "J" marked for identification, and ask you if you have ever seen that paper before.

A. Yes. [319]

Q. Under what circumstances?

A. I received it in the United States mail.

Q. From whom?

A. Well, I could not tell who I received it from, just in the ordinary course of mail.

Q. You know the handwriting?

A. Yes, it is from M. J. Fontana.

Q. What connection had he with the California Fruit Canners Association at that time?

A. He was superintendent.

Q. After receiving this letter from Mr. Fontana did you make any answer to it?

A. Yes.

Mr. LYON.—We offer in evidence this exhibit "J" for identification; you have already seen it, Mr. Miller.

Mr. CHAPPELL.—We object to this letter as having nothing in it that is material to this case in any way whatsoever; it can only be hearsay as to any facts that exist at any time.

Mr. LYON.—The letter is only material in connection with another one that I will offer in evidence; it is preliminary, and that is all.

The COURT.—Read it. I cannot read it.

(Testimony of E. H. Kennedy.)

Mr. LYON.—(Reading:) “Aug. 4, 1903.

My dear Mr. Kennedy: I intended to look how Grier & Waters are peeling their peaches but did not get the time. I therefore wish you would in some way or other find out what system they use. This ought to be attended to at once by some intelligent person & promptly Reported to Head office. A prompt attention to above will be appreciated.

Yours truly,

M. J. FONTANA.”

The COURT.—What is the materiality of that?

Mr. LYON.—Just showing the reason for his writing and the letter referred to in a document that I am about to offer in evidence is the answer to it is the material part.

The COURT.—The objection is sustained, as not material. [320] You can read the letter that is material.

Mr. LYON.—Exception.

Q. After receiving this request from Mr. Fontana, did you write to him? A. Yes.

Q. Under what date?

A. Well, I could not state from memory; but just about the same day or following day.

Q. Have you a letter-press copy of that letter?

A. Yes.

Q. Is this the letter-press copy of that letter (showing)? A. Yes.

Q. Was the original of his letter mailed to the California Fruit Cannery Association on the date it bears date? A. Yes.

(Testimony of E. H. Kennedy.)

Mr. LYON.—We offer in evidence the letter-press copy referred to.

Mr. CHAPPELL.—That is objected to for the reason that it contains nothing material to the case in any way; it would be hearsay testimony if it would amount to anything.

Mr. MILLER.—As not binding on us; it was not written to a party to this suit.

Mr. CHAPPELL.—It is not competent evidence in this case for any reason.

The COURT.—What is the purpose of this?

Mr. LYON.—The purpose of that is to show the general knowledge and the fact that Mr. Grier was using jets of water in hydraulic pressure at that time.

The COURT.—It is not competent for showing that he was using it; he has already testified to it; the objection is sustained.

Mr. LYON.—Note an exception. I will ask that under the rule the letter be spread on the records as an offer to prove it, and an exception to the ruling of the Court refusing that it be [321] admitted.

The COURT.—Let it take that course.

(The letter referred to is as follows:)

“Aug. 5th, 1903.

California Fruit Canners' Association,
San Francisco, California.

General Superintendent.

Gentlemen:—

Replying to your favor of the 4th regarding system of peeling peaches employed by Grier & Waters, the writer was at Pomona a few days ago and was

through Mr. Waters' Cannery and we did not notice anything new in this line, he has a crude arrangement of dipping his peaches in a solution of soda but it is the same as it was five years ago and consists of a perforated bucket with a pulley and a rope, they use it very little, if any, and only then on pie fruit, in fact we do not think he has used it since Grier left there, but peels all his fruit by hand with the Pomona peeling Knife.

Grier works part of his fruit with the soda system and has an arrangement of putting the fruit under hydraulic pressure of water after it has been treated by the soda, or in other words he has the water under about 70 pounds pressure and directs this against the fruit to remove all effects of the soda as well as peeling, dirt etc. and last season they turned out some very nice goods with it, have not heard what they are accomplishing with it this season and they only commenced work on peaches two days ago and do not know if they have used it or not this season.

Very truly yours,

CALIFORNIA FRUIT CANNERS ASSOCIATION,

Per E. H. KENNEDY,"

Mr. LYON.—That is all, Mr. Kennedy. [322]

Cross-examination.

Mr. CHAPPELL.—Q. How successfully was this machine operated at Los Angeles that you used the spray? A. Very successfully.

Q. As a matter of fact was it not used only on the lower grade of fruit? A. No.

Q. It was used on all grades, was it?

(Testimony of E. H. Kennedy.)

A. After it was thoroughly in working order, yes.

Q. Was there not lye left on the peaches when this machine was used, to a considerable extent?

A. No, not noticeable.

Q. Did you not receive instructions to use the machine only on low-grade fruit? A. No.

The COURT.—Q. You say that you are now superintendent of the company at Los Angeles?

A. During the season of 1903.

Q. Not now? A. No.

Mr. CHAPPELL.—Q. I call your attention to a letter-press book, particularly page 31 of it, and ask you if you recognize that as a copy of a letter that you wrote? A. I recognize my signature.

Q. Will you read the letter and see if it refreshes your recollection?

A. Yes, it refreshes my recollection.

Q. What is your recollection, now, about the low-grade fruit?

A. I would think by that letter that we did receive such instructions.

Q. That was before the season was well advanced, was it not?

A. I forget the date of that—the peach season was pretty well along at that time; it is August 29.

Q. Had you prior to that time reported any troubles that you had with the machine, that you recollect?

A. Not that I recollect of; I presume we had, though.

Q. You think now that you had trouble with the

(Testimony of E. H. Kennedy.)

machine and that [323] there was discoloration, do you?

A. I do not recollect about the discoloration; I recollect about their having trouble with the machine, perhaps with discoloration, too, but I don't recollect.

Q. Did you put the spray-pipe on this machine here across the elevator the first thing in the season when you put it in?

A. I think we put it on there about the second day after we run; I could not be sure about that, but that is my recollection.

Q. You don't remember when you began running it? A. During the peach season?

Q. Yes. A. I think it was August 4th or 5th.

Q. The season began a little late that year; is that right?

A. Yes; that is a little bit late for us.

The COURT.—Q. Then this letter of instructions came very soon after you had commenced?

A. This came the 28th of August; our principal peach season there is during August.

Mr. CHAPPELL.—Q. Did you not receive some instructions as to the preparation of an acid solution to be used on the peaches to neutralize the alkali?

A. I did not, no; I can't recall if I did.

Q. You don't remember to have received any formula of that kind?

A. No. I know there was a formula used there, but I did not receive any instructions about it.

Q. But there was a formula with some hydrochloric acid or something of that kind to neutralize

(Testimony of E. H. Kennedy.)

the alkali on the peaches?

A. There was something, yes.

Q. You used that, didn't you?

A. Yes, it was used there; I don't know what it was.

That corrected any discoloration of the peaches due to the [324] lye, I suppose?

A. I do not think so; I think it probably assisted, but I do not think it would remove it.

Q. Do you remember any request having been made of you to ascertain anything about a public use of spraying means at any point, and of your making and report to the California Fruit Canners' Association about that? A. During that year?

Q. No, later than that? A. Yes, 1913.

Q. Do you remember what you reported?

A. Yes.

Q. Do you remember what machine you investigated?

A. The H. K. Miller Manufacturing Company's machine.

Q. You did not make any report about any Grier machine at that time, did you?

A. I do not think so.

The COURT.—Q. That is in 1913, you say?

A. That is the date,—1913.

The COURT.—What was it he was requested to do?

Mr. CHAPPELL.—I have not the request we made, your Honor.

The COURT.—What was your question?

Mr. CHAPPELL.—That he was requested to in-

(Testimony of E. H. Kennedy.)

investigate as to the matter of public use of sprays prior to 1903?

A. I want to correct my answer, if that is the way you ask the question.

Q. Then correct your answer.

A. I understood you to say, did I receive any request regarding the use of this machine; as to the general use of sprays I did not receive any request to that effect .

Q. I thought you said that you investigated the H. K. Miller machine? A. I did.

Q. And you reported on that? A. Yes.

Q. What was the object of your investigation then?

A. I did that at the request of Mr. T. B. Dawson, who is assistant superintendent of the California Fruit Canners' Association, [325] He came to my factory and said that they were having some trouble east, and unless they could establish that this Vernon machine had jets of water on it we were liable to have to pay royalty to another man, something to that effect, so what Mr. Dawson requested me was—he asked me what my recollection was as to the Vernon machine installed in Los Angeles in 1903, but he did not request me to make any investigation of anything else that I recall of.

Q. Then how did it come that you particularly investigated the Miller machine?

A. Because that was a machine we had used in Los Angeles.

Q. I thought you said that it was the Vernon machine that you used there?

(Testimony of E. H. Kennedy.)

A. No—well, the Miller machine was a part of the Vernon machine; the brushes were manufactured by the H. K. Miller Manufacturing Company of Glendora.

Q. Do you know of any particular reason why he should ask you about it?

A. Yes; because I was the man that was in charge of the work there.

Q. I show you a letter and ask you if you can identify that, and if it refreshes your recollection any about this matter?

A. No. I had this letter in mind when I was talking to you.

Q. Will you please look at some other letters and see if they refresh your recollection as to whether or not you took particular pains to investigate the Miller machine as distinguished from the Los Angeles machine?

A. Yes; I remember of writing this letter; I wrote that letter; this is also my letter.

Q. Did you or did you not investigate the Miller machine as distinguished from the Los Angeles machine?

The COURT.—What do you call the Los Angeles machine? [326]

Mr. CHAPPELL.—That was the machine that was used in the plant there at Los Angeles of the California Fruit Canners' Association about which the witness testified.

Mr. MILLER.—Which he called the Vernon machine.

(Testimony of E. H. Kennedy.)

The COURT.—He means the Vernon machine.

A. Yes; I investigated the Miller machine thoroughly, and also had a talk with Mr. Miller as shown in the letter.

Mr. CHAPPELL.—These letters correctly state all the information you could obtain at that time?

A. Yes.

Mr. CHAPPELL.—I would like to offer these letters in evidence; it will save considerable further questioning. The letters identified by the witness are offered in evidence with the request—

Mr. LYON.—Let them be copied into the record.

Mr. CHAPPELL.—I ask that they be marked as plaintiff's exhibit and that they be spread on the record.

(The letters are marked Plaintiff's Exhibit 7 and are as follows:) [327]

(Letter-head of BONNER FRUIT COMPANY,
Inc.)

Lankershim, Cal., March 20, 1913.

Mr. T. B. Dawson,
San Francisco, Cal.

Dear Sir:

I received today from Washington copy of the patent of the FRUIT CLEANER, BRUSHER, AND WASHER, the same being Letters Patent, #616,284, dated December 20, 1898, and I am pleased to note that the description regarding the application of water to the washing of the fruit is very explicit. The following is the way the patent reads on this matter:

“Another object of our invention is to provide a fruit-washing machine in which the water will not soak nor injure the brushes and which will apply the water in the most effective way. In our newly-invented fruit cleaner the water is applied above the fruit, but not directly above the brushes. The fruit is supported by a fruit-rest between the brushes. A perforated pipe is arranged above the rest, and an endless belt with carriers is arranged to slide the fruit positively along the rest, while the brushes operate against the sides of the fruit and rotate downward and inward toward the rest. The water applied to the fruit does not drip upon the brushes. The centrifugal force of the rotating brushes prevents the water which may be squirted onto the brushes from flowing along the bristles to the body of the brushes.”

In making a further description referring to the drawing under the letter “N” it says:

“N indicates a valve for shutting off the water.

It is to be understood that the machine may be connected directly with a hydrant or any other water supply.” [328]

This should settle the question beyond any doubt that they were using water as early as 1898 for washing oranges and lemons and other fruit, and this description coincides with what Mr. Miller told me at Glendora a few days ago regarding the manner in which the water was applied to the brushes which he furnished the C. F. C. A. plant in 1903.

If you would like to read this copy of the patent which I received I will gladly forward the same to you.

Very truly yours,

C. H. KENNEDY. [329]

(Letter-head of BONNER FRUIT COMPANY,
Inc.)

Lankershim, Cal., March 18, 1913.

Mr. T. B. Dawson,

C/o C. F. C. A., San Francisco, Cal.

Dear Sir:

I was at Glendora yesterday and had a talk with Mr. H. K. Miller relative to the brushes he built for the Los Angeles plant in 1903. Also went with him to one of their Orange Packing Houses to see the brushes he built for them, but they are the same as the one I saw at Riverside and are quite different from the ones he furnished for the Cannery.

Mr. Miller has a throat affliction and it is quite difficult for him to talk and this makes it difficult for him to explain the details of the different brushes that he has built. He told me that he had built many brushes with the sprinkler attachment for different citrus packers, and that I would find one in operation now in the Packing House at San Marino.

He said a lawyer representing the Canneries had visited him about two months ago asking for information, and that he had explained in detail to him all the facts in the case, and that he not only had built the brushes for the C. F. C. A. with the sprinkler attachment but he had built brushes at different

times for the Orange Packers with this attachment when they desired them. You perhaps know who the lawyer was, we do not as Mr. Miller did not recall his name.

I will visit the packing house at San Marino and see what they have there, and on your next visit to Los Angeles, if you so desire, we can go out and see one of the [330] Miller Brushes in operation. I find it of great assistance to see them in refreshing one's memory as to the construction of the brushes used in the C. F. C. A. plant in 1903, but I am more satisfied than ever that those particular brushes differed considerably from the others that he has built.

Very truly yours,

E. H. KENNEDY. [331]

(Letter-head of BONNER FRUIT COMPANY,
Inc.)

Lankershim, Cal., March Fifth, 1913.

Mr. T. B. Dawson,

C/o C. F. C. A., 120 Market St.,
San Francisco, Cal.

My dear Mr. Dawson:

In making some inquiry among the Orange Packers regarding brushes they use for brushing the oranges I learned of one "Miller Brush" at Riverside, and I went down there yesterday to see the same, and I find the brush differs considerably from the Miller Brush we used in the Cannery at Los Angeles but it follows the same lines in its construction. That is, the brushes are about 8 inches in diameter and run the full length of the machine and the fruit

is fed into a hopper at the receiving end of the machine and divided into three different rows, and the fruit is carried along the brushes with a one-inch leather belt, the same as we used on the machine in Los Angeles.

This machine is marked "The Baker Fruit Cleaner," manufactured by H. K. Miller, Glendora, and we learned that Mr. Miller does not manufacture the brushes any more but has sold his interest in the same to Mr. Stebler, of Riverside, but I did not learn what became of Mr. Miller but will endeavor to locate him.

From what information I gathered yesterday I would think that the brushes which we used in Los Angeles were perhaps made somewhat differently from the Orange brushes, along some ideas furnished at that time by Mr. Vernon, as it appears that the Orange Packers do not require a sprinkler in cleaning their fruit. I am writing to Washington today and will try to get a copy of the patent of this machine to [332] see if it shows there is any sprinkling device connected with the brushes.

I could no doubt have learned something more by going to see Mr. Stebler but I thought it best not to make any noise about the matter at this time as it may be possible that it would be desirable for the Cannery interests to secure this patent from Mr. Stebler and that it would perhaps be advisable for me not to talk with him about the matter at this time. As I have said I will endeavor to learn something about the manufacture of these brushes at Glendora

and I should know within a couple of weeks if I will be able to secure a copy of the patent.

Very truly yours,

E. H. KENNEDY. [333]

(Letter-head of BONNER FRUIT COMPANY,
Inc.)

Lankershim, Cal., Feb. 15, 1913.

Mr. T. B. Dawson,

San Francisco, Cal.

Dear Mr. Dawson:

Since talking with you a few days ago about the "Miller Brush" used in connection with the Peeling machine installed in C. F. C. A. plant at Los Angeles in 1903, I have been trying to refresh my memory upon this subject and have talked with Jenner Rice, one of the boys that helped install this machine, but cannot recall at this time the details of the sprinkler.

I thought perhaps you have among your files some blue prints or other papers that give a description or outline of the work, as it was proposed to be installed by Mr. Brown at that time. Something of this kind would be of assistance in refreshing our memory so that we could study out the details.

I will endeavor to see Mr. Sensany, who was the carpenter doing the wood work, also Mr. McNeal, who was the one that did the pipe fitting and had charge of the operation of the line when it was in working order, and try to gather some information from them, and if you have any papers that will assist us in refreshing our minds along this line would

(Testimony of E. H. Kennedy.)

appreciate a copy of the same.

Very truly yours,

E. H. KENNEDY. [334]

Q. I call your attention to a letter-book, tissue copies, and ask you if you are able to identify that book?

Mr. LYON.—I would like to see that before the question is answered.

The COURT.—Let him ask the question first; when he offers the book you can see it. Can you identify that book, he asked you?

A. Yes.

Mr. CHAPPELL.—Q. What book is this?

A. It is the letter-press book I think used in the Los Angeles plant in 1903; I see several letters there.

The COURT.—The letter-press book of the California Fruit Canners' Association plant in 1903?

A. Yes.

Mr. CHAPPELL.—Q. I call your attention to a letter at page 338 of this letter-book and ask you if you can identify that as a copy of a letter which you wrote?

Mr. LYON.—That is objected to.

Mr. MILLER.—It is signed by this gentleman; it is not a mere copy; that has his signature.

The COURT.—Q. You can tell whether it is your signature?

A. Yes. I cannot read the letter but this is my signature. I cannot make out the letter.

Mr. CHAPPELL.—That is all.

Testimony of Edward F. Lambert, for Defendant.

EDWARD F. LAMBERT, called for the defendant, sworn.

Mr. LYON.—Q. How old are you, Mr. Lambert?

A. 45 my next birthday.

Q. Where do you now reside?

A. 710 Murray Street, Berkeley.

Q. At any time did you reside in Fresno, California? A. I did.

Q. During what years?

A. From February, well about the 8th, [335] 1902, during that entire year.

Q. What were you engaged in during that year?

A. Well, I was what they call the warehouse man for C. J. Vernon in the cannery.

Q. What cannery?

A. The California Fruit Canners' Association.

Q. At Fresno? A. Yes.

Q. Were you there at that cannery during the peach packing season of 1902? A. I was.

Q. Did you have occasion during that time at any time to observe the method or process used in peeling peaches?

A. Yes, in a way; I did not work in that department but I often passed through there.

Q. Describe to us how peaches were peeled there at that packing-house during the season of 1902?

A. I could not tell you the mechanical construction of that, because I do not know.

Q. Tell us what you remember of it.

A. I remember the peaches being carried on a belt

(Testimony of Edward F. Lambert.)

through a tank of some sort, of chemical perhaps; then through brushes on which there was water coming down as they passed along.

Q. That is all you remember in regard to it?

A. Yes.

Q. You worked there but the one year?

A. Yes, I worked there just a year.

Mr. LYON.—You may inquire.

Cross-examination.

Mr. CHAPPELL.—Q. Who was superintendent the year you were there? A. Charles J. Vernon.

Q. This machine was known as the Vernon machine, was it? A. Yes.

Q. Do you know whether Mr. Vernon patented it, or not?

A. I do not know just what he did on that. [336]

Mr. CHAPPELL.—That is all.

Mr. LYON.—That is all.

Mr. LYON.—Defendant rests.

Testimony of Melville E. Dunkley, for Plaintiff (in Rebuttal).

MELVILLE E. DUNKLEY, recalled for the plaintiff in rebuttal:

Mr. CHAPPELL.—Q. Will you state the early history of the development of the Dunkley patent peeling-machine as you remember it, giving the dates, referring to the machine of the patent in suit and that is here for consideration?

A. The Dunkley Company was incorporated early in 1901 and with the new incorporation came plans for a large increase in business, and at the same time

(Testimony of Melville E. Dunkley.)

we started in the transportation business on a small scale from South Haven to Chicago; South Haven was the site of the largest plant which we had at that time, and at which the greater part of the peach-packing industry was carried on. We had been bothered for a number of years to get help enough to put up a pack large enough to take care of our sales.

Mr. WHITE.—If we may interrupt at this time, I ask that the same rule be invoked against the witnesses for the plaintiff in regard to their being excluded from the room.

The COURT.—It has been right straight along.

Mr. WHITE.—Mr. Dunkley is here.

Mr. MILLER.—Mr. Dunkley is a party to the suit.

The COURT.—It never goes to the parties.

Mr. WHITE.—This is a corporation that is the party.

The COURT.—We always allow the managing head of a corporation to be in the courtroom; we have never excluded them. Is this Mr. Dunkley, here? [337]

Mr. CHAPPELL.—This is the son of the inventor.

The COURT.—Which is the senior Dunkley?

Mr. CHAPPELL.—This gentleman here (indicating).

The COURT.—Will he be examined on the same lines?

Mr. CHAPPELL.—Yes.

The COURT.—Then I think there is no reason why he should not be subject to the rule.

(Testimony of Melville E. Dunkley.)

Mr. MILLER.—Very well.

The COURT.—I thought you were objecting because this witness had been in the courtroom.

Mr. WHITE.—The story of the two will be identical; that is the idea.

A. (Continuing.) In the year 1901 we made some additions to the factory, both in building and in machinery equipment. We started out in a small way with the first of the open-top bins, that is the sanitary bins, and our sales were increasing so rapidly that as I said before it was an impossibility to fill our orders in full; the ideas of increasing capacity were talked of a number of times, and in the year 1901 we also built a small factory at Hartford, Michigan; I believe it was about 20 miles from South Haven, and I took charge personally of the peach operations at Hartford. In 1902, some time early in the summer, my father had—

Q. —Who is S. J. Dunkley?

A. Who is S. J. Dunkley,—told me regarding his ideas and some of the experiments which he had done in the peeling of peaches by the use of caustic soda.

Q. In 1902 you say?

A. This was early in 1902. The idea did not appeal to me for the simple reason that my knowledge at that time of the use of caustic soda as a floor-cleaning agent was not in harmony with putting it on to food stuff, and I could not see where it could be used on food stuff. However, [338] on one of my trips after the berry season was finished at Hart-

(Testimony of Melville E. Dunkley.)

ford he demonstrated to me what could be done in the way of peeling whole peaches, by first dipping them in a lye bath and then cutting the skin off by the use of sprays; he took the peaches in his hand after he had taken them out of the lye bath and cooled them off and held them under a faucet, putting his finger over the end of the faucet so as to confine the large spray to a smaller one and get considerable velocity to the jet, and he at that time outlined to me his idea of a machine, and started in and made some few more experiments along that line. At that time we could obtain fresh fruit, southern fruit from Chicago within a few hours notice, it being brought over on the boat, and I believe that I packed a few cans of peaches at that time, peeling them by hand the same as he had done, and putting them in glass jars. The machine such as outlined is practically the same as the one standing here, and we started in getting ready to put that machine together in the early part of 1902. The season, of course, was very busy and I was back and forth from Hartford so that the machine was not finished until toward the late fall of 1902; we got perhaps a few bushels of peaches through there using an ordinary galvanized tub and a basket of some kind to scald a few bushels of peaches in order to get work enough done to see whether the matter was going to be practicable or not. We, however, were very well satisfied with the results and in the following spring we started to finish the machine, ordering the parts for the scalding, prevaricator we called it. That was

(Testimony of Melville E. Dunkley.)

built and set up with this first experimental machine at South Haven in the early summer of 1903. Later that year there was another machine built and put in operation. The first machine was rather crude and while we did more or less with it, the second machine which was a two-line [339] machine I believe handled a very large number of our peaches, and was very successful. In 1903 and 1904—that is, in the winter of 1903 and 1904 we built more of the machines, and installed them in the South Haven factory. These first two or four machines were built with wooden supports, the legs or supports, the frame work for the scalding-tank was of timber, and the legs or woodwork for the peeling-machine was of wood, and the slop from the caustic soda getting on this wood cut it out, ate it up very rapidly, so that we started in in the fall of 1904 and the spring of 1905, or winter and spring, and redesigned the machine, using cast-iron for a framework, and in the new scalders which were made we made those entirely of steel; in the spring of 1905 Mr. Dawson and Mr. Bentley who had become interested in the line, and who had called on us and looked the line over previously through some of our representatives in the East, made arrangements for a shipment of an entire outfit to their plant; this shipment in two cars was made in June, 1905, and I believe went to Chico.

The COURT.—Q. Went to Chico?

A. Yes. We at that time were very busy and the man that we had sent out with the outfit was a person who had had no experience handling them, and

(Testimony of Melville E. Dunkley.)

at about the same time the California Canners Association started their own machine, so there was practically no trial given to the machine, and the following year they were sent back to us and reinstalled in our own factory.

Mr. CHAPPELL.—Q. Please state your recollection as to when the first complete machine was operated and where?

A. The first complete machine including the scalding and the peeler was operated at South Haven in 1903. The scalding was delivered in April, I believe, of 1903 and the machine was set up at South Haven as soon after that as we could get to it, and we started practical operations on that line as soon as the Georgia peaches came into the market at Chicago, which is usually early in July. [340]

Q. Then you would fix the date for the first successful operation as when?

A. In July, 1903, for the commercial operation of the machine.

The COURT.—July, 1913, or 1903?

A. 1903.

Mr. CHAPPELL.—Q. When was the brush part and spray part of the machine operated effectively in the peeling of peaches as near as you remember?

A. In the fall of 1902. I do not think that we got the machine built to do very much experimenting along that line until along in late October, on the late peaches. We have peaches in Michigan into November, sometimes after snow fall. [341]

(Testimony of Melville E. Dunkley.)

Q. At that time how were the peaches treated with the lye?

A. Most any way. Some of them were taken from the basket and into a pan of boiling lye and others, if we had any amounts that we were running through, they were dipped in a wire basket of some kind into a pail or tub with a steam hose turned into it to heat it.

Q. What became of that first machine?

A. The framework is here, in South Haven.

The COURT.—Here?

A. In San Francisco. The brushes and the pipe have been taken out. I think that the pipes were used in another machine, and the brushes, no doubt, were worn out.

Mr. CHAPPELL.—We will have that frame brought in this afternoon, if your Honor please.

The COURT.—When did you apply for patent, or did you apply?

A. My father applied for patent.

The COURT.—That shows on the patent, I suppose.

Mr. WHITE.—November 29, 1904.

Mr. CHAPPELL.—How long did you continue to use these machines at South Haven, at the South Haven plant?

A. We used them as long as there were any peaches at South Haven to pack. In October of 1906 we had a very severe freeze, which killed practically all of the fruit trees within a radius of 50 miles of South Haven. The factory operated in

(Testimony of Melville E. Dunkley.)

1907 on fruit that we shipped in from the north; this, however, was expensive and unsatisfactory, and we discontinued it.

Mr. CHAPPELL.—Unless your Honor has some questions to ask, that is all of the direct examination.

Cross-examination.

Mr. WHITE.—Q. What fruits were handled by the South Haven [342] Cannery in the year 1902?

A. In what way? What do you mean by that?

Q. I ask you what fruits were handled by that cannery in 1902, all varieties of fruits.

A. There might have been a few berries, I would not be sure as to that, peaches, and a few pears.

Q. When did the season of canning peaches begin in 1902 at that cannery?

A. Well, the best way I can answer that would be to say that the peach season in South Haven, as a rule, starts in August.

Q. When did the peach season end that year, that is, the canning operations in that cannery?

A. The canning operations ended—we never packed much after the 10th of October.

Q. When did the operations on pears begin and end in that cannery in 1902?

A. It would be hard to say. Bartlet pears in Michigan usually come in before the peaches. I would say they were all over by September 10.

Q. When did the operation on pears begin?

A. That would be hard to say, along about the 15th of August, perhaps.

(Testimony of Melville E. Dunkley.)

The COURT.—Q. On pears?

A. Yes, the 15th of August.

The COURT.—I thought you asked when it commenced and when it ended.

Mr. WHITE.—He has answered both; he said it commenced on August 15th and ended about September 10th in 1902.

Q. Just describe what was done to those pears in 1902 at this cannery in regard to preparing them for canning purposes.

A. They have always been handled by hand.

Q. Were they peeled by hand? A. Yes.

Q. What was the tonnage of pears in 1902?

A. Absolutely impossible for me to give it.

Q. Can you give any idea as to the quantity of pears handled in [343] that year?

A. There never was much; Michigan has never been much of a pear state.

Q. In other words, your operations in regard to pears in 1902 were of very small consequence?

A. Perhaps 4 or 5 cars.

Q. Now, during the year 1903, at the South Haven Cannery of the Dunkley Company what fruits were handled? A. Practically the same.

Q. Only pears and peaches?

A. I said perhaps berries.

Q. How were the pears operated on in 1903?

A. Practically the same way; I said before that they were always hand-pared.

Q. How many employees were employed in the year 1902 in connection with the peeling of pears?

(Testimony of Melville E. Dunkley.)

A. We always employed, Mr. White, all the employees that we could get; it might have been increased somewhat from year to year, as it naturally would, as the places grow. We always had work for all that we could get.

Q. Please answer the question.

A. I think I have answered it.

Q. I asked you how many employees were working on pears in 1902 at this cannery.

A. That is impossible to answer.

Q. 10, 15 or 20? A. I have no idea.

Q. Can you state whether or not more than 10 women and men were employed in peeling pears in 1902 at that cannery?

A. During the pear season I should say there were somewhere from 10 to 50.

Q. From 10 to 50 working on pears? A. Yes.

Q. During the year 1903, state the number of employees who were engaged in peeling pears at that cannery.

A. Practically the same; we might have had a few more pears, it is up to the season, Mr. White.

Q. From 10 to 50 employees were working on pears then in 1903; is that correct?

A. I don't know whether it is correct, or not; [344] that is an estimate; that is a mere opinion.

The COURT.—What is the object of this?

Mr. WHITE.—I want to lay a foundation for future questions.

The COURT.—What is the object of it?

(Testimony of Melville E. Dunkley.)

Mr. WHITE.—I won't continue it then, if your Honor please.

The COURT.—Unless you are willing to state it, I cannot allow time to be taken up with matters that I cannot see the materiality of.

Mr. WHITE.—Now, in 1903—

Mr. MILLER.—I was just going to call your Honor's attention to the fact that it is a purely collateral matter that he is laying a foundation to contradict.

The COURT.—You cannot introduce any collateral matter and then contradict on that, of course.

Mr. MILLER.—That is why I called his attention to it.

The COURT.—I do not think counsel would need even call attention to that, he is too astute.

Mr. MILLER.—He announced that was what it was practically for.

The COURT.—He said another matter, and I wanted to know what it was.

Mr. WHITE.—Q. In the year 1902, what methods were used in peeling peaches?

A. We peeled all of our peaches in 1902 with either hand-peeling knives or St. Claire-Scott rotary parers.

Q. Was that paring done in one room at the cannery, or more than one room, in 1902?

A. In 1902, this cannery was practically one room, about 400 feet long and about 60 feet wide, perhaps not quite so wide as that.

Q. Now, please describe just the manner in which

(Testimony of Melville E. Dunkley.)

these peaches were peeled by hand at that cannery in 1902, stating how the [345] women were distributed in the room, whether standing or sitting, and how the peaches were conveyed to them, and how they were taken away.

The COURT.—What is the object of that?

Mr. WHITE.—Well, I want to get, first, if your Honor please, all the surrounding circumstances regarding the operation of this cannery in 1902 and 1903, and then I am coming down to details, to see whether the details will fit in with these generalizations. I am on no fishing excursion.

Mr. LYON.—Also to show whether this witness' testimony is to be given credence or not, as it is to be viewed in the same light as evidence of prior use; the Court will view it in the same way, because it is an attempt to carry an invention back, and it is subject to the same criticisms by the Court, as evidence in regard to prior use, and we are entitled to show it.

The COURT.—I simply wanted to know the object of it. Mr. White's explanation was sufficient. Of course, I simply wanted to get his general idea.

A. Read the question. (The last question repeated by the reporter). It would be impossible to go into details exactly. I think the practice of peeling peaches by hand in our factory was practically the same as in all others. It was done piece work, at so much per bushel, as we call it in the East, which is a 50-pound basket or box. The women were at

(Testimony of Melville E. Dunkley.)

canning tables or paring tables, in groups, as a usual practice, and each of them had her basket of fruit on a convenient bucket by her side, and a pan in her lap for the pits, and as fast as finished, the baskets were checked by an assistant floor lady, or checker, and the prepared parts were taken away by an attendant.

Q. Were there a number of those peeling tables in that cannery in [346] 1902, at each of which there were a number of women peeling?

A. Yes; the number is very indefinite.

Q. In 1903, what methods were used in peeling peaches at that cannery?

A. In 1903 we packed, I should say, 75% of our pack with the new peeling-machine.

Q. And the balance was how peeled?

A. The balance was peeled by hand.

Q. In regard to the peeling of the balance, did these women sit around various tables in that cannery, peeling as they had done in 1902?

A. It is my opinion that they did, yes.

Q. Don't you know what the fact is?

A. That is as far as I want to go.

Q. You mean that you do not recollect in regard to how these women peeled the peaches in 1903?

A. What is that question?

The COURT.—You mean to say you do not remember how the women peeled the peaches in 1903?

A. Certainly, I remember how they peeled the peaches in 1903.

Mr. WHITE.—In that cannery in South Haven

(Testimony of Melville E. Dunkley.)

in 1903, did these women who were engaged in peeling peaches sit around a number of different peeling tables, as they did in 1902?

A. The women that were peeling peaches by hand, yes.

Q. That is correct, is it? A. Yes.

Q. How many women were employed in that cannery in 1903 peeling peaches by hand?

A. Perhaps 10 or 15 or 20.

Q. About how many were employed there in 1903 in peeling pears?

A. I answered that once before.

Q. From 10 to 15?

A. Somewhere around there.

Q. How many stories were there in that South Haven Cannery?

A. There is a basement, the main floor, and a third floor in part of the building; part of it used as a can room, and in the [347] north wing the third floor was used as a dormitory.

Q. What was down in that basement?

A. Just storage.

Q. Nothing else? A. No.

Q. The engine was not down there?

A. In the engine-room.

Q. The engine-room and boiler-room was down in that basement?

A. Not in that basement, no; that was a separate part; at one time it was only connected by doors to the rest of the factory.

Q. Now, in regard to that main room on the first

(Testimony of Melville E. Dunkley.)

floor of that cannery, was there any change made in the partitions between 1902 and 1903?

A. There might have been a number of them.

Q. Do you remember any partition being torn out?

A. I could not give you, Mr. White, any direct information; we removed partitions there from time to time; as we increased the outlay of machinery, we took out any partitions which might have been put in there that were in the way, until in 1905 we had everything out of there, and one clear line of peach machinery some 600 feet long, including peeling machines, pitting-machines, elevators, sorters, washing-machines, filling-machines, conveyors to the syruping-machines, automatic double seamers, and from the double seamers automatic carriers which carried them to automatic cookers, and these in turn automatically ejected the different grades from the cookers and rolled them into the warehouse; that was the floor line, and that was in operation in 1905.

Q. In 1902 where were these experiments with the lye process carried on by your father in that cannery?

A. I did not see my father at his first experiments.

Q. Did you see your father experiment with that process at any time in 1902 in that cannery?

A. When he called my attention to it, the experiments, the first ones that I saw, took place in the main room, and the experiments were done before the windows [348] on the north end, on the north side of the main room; the faucet that he used was at the entrance into the north wing.

(Testimony of Melville E. Dunkley.)

Q. I will ask you, Mr. Dunkley, if these three blue-prints I hand you disclose correctly the floor plan of your cannery at South Haven in 1902 and '03? A. No.

Q. Just point out on the floor plan of the floor No. 1, the corrections you would make in that?

A. This is a floor plan of the factory as it should have been in about 1905 or 6; I can see no difference practically.

The COURT.—Q. What was the condition in 1902 or 1903? When was it put up?

A. It was started in 1895 and additions were made as the business increased; it was not a new factory.

Q. You say it was started in 1895.

A. In 1895.

Mr. WHITE.—Mr. Dunkley, I refer you to the plan there of the first floor of your cannery, and ask you to state if that shows it correctly as it was in 1902 and 1903? A. It does not.

Q. Will you please indicate thereon what corrections must be made in order to make it correctly represent the floor plan of that cannery in 1902 and 1903?

A. This addition shown in dotted lines was not put in until after 1902.

Q. Will you please indicate on the diagram itself when that was put in?

Q. I don't remember just the year it was put in; I think it was put in in 1903 or 1904.

Q. Any other corrections to be made on that diagram in order to make it correct?

A. This was enlarged—

(Testimony of Melville E. Dunkley.)

The COURT.—Don't say this.

Mr. WHITE.—Q. This porch you mean?

A. This space, this porch was enlarged in 1904, I think, and the cold storage was put underneath it, excavations were made and cold storage put under there. [349]

Q. Any other corrections?

A. This room on the west side, northwest end—

Q. (Intg.) That room was used as your preserving-room, was it not? A. Not altogether.

Q. Was it used for that purpose at all?

A. When we were packing glass goods—

Q. (Intg.) That is where the glass goods were put up, in that room there? A. Not entirely.

Q. Any other corrections to be made in that floor plan?

A. Yes. The addition on to the north wing was not put on until 1903 or 1904.

Q. Will you please point out on this floor plan of the first floor of that cannery the point where your father carried on these experiments with the lye process in 1902?

A. They were carried on right in there.

Q. You have marked it with the letter "X"?

A. Yes.

Q. Just state in detail what these experiments were in 1902 at that particular spot in that room, indicating the instrumentalities used, and who were present?

A. The experiments were carried on, I believe, over a gasoline stove, having some soda in solution in a pan of some kind, and I think the peaches were

(Testimony of Melville E. Dunkley.)

dropped into the pan and fished out with a fork or a spoon and gingerly carried to—

The COURT.—The faucet?

A. The faucet which stood in here, which I will mark “Z.”

Q. Was there a window here at this point?

A. This building was built on after this room was built, and there were windows in here all the time.

Q. This addition was put on after the time you are speaking of?

A. Yes, and there were always windows through there.

Q. There were windows on this side of the room, and this room had [350] not been built on?

A. It was enlarged; it might have been built on, but it was enlarged later.

Mr. WHITE.—Q. Where have you indicated on here that gasoline stove was?

A. I think it is marked “X.” I don’t know just where the gasoline stove was exactly, but somewhere in that part of the room.

Q. Are you willing to state positively that gasoline stove was not located where I have indicated with the letter “B”?

A. No; it might have been located there, but the experiments that my father did for me were done right in front of those windows. When he had his first experiments, I was not there.

Q. Who heated the caustic soda on that little gasoline stove there at the time your father carried on these experiments?

(Testimony of Melville E. Dunkley.)

A. I think Miss Wing did; I am not sure, however.

Q. Who else was present at the time these experiments were carried on?

A. There might have been any number of people present.

Q. Just give the names of those employees who were present during the time your father was making these experiments with the lye process in 1902?

The COURT.—As near as you can remember.

A. I think that perhaps Stuart Campbell, Harvey Shaw, A. Verhage.

Mr. WHITE.—Q. Where does Harvey Shaw live?

A. He lives in Kalamazoo.

Q. When did you last see him?

A. He is here in San Francisco now.

Q. Where does Stuart Campbell live?

A. I saw Stuart Campbell in Kalamazoo a few days ago or a few weeks ago; otherwise, I have not seen him since he left town suddenly.

Q. Did you discuss this case with him?

A. In Kalamazoo?

Q. Yes. A. No. [351]

Q. Did you mention to him you would like to have him as a witness? A. No.

Q. You didn't inquire of him as to whether he remembered anything about this early disclosure of the lye process?

A. No. He left us under very peculiar circumstances, so it never entered my head that perhaps he would be desirable as a witness.

(Testimony of Melville E. Dunkley.)

Q. Where does this other party live that you have mentioned? A. Verhage is still in Kalamazoo.

Q. Still lives there? A. Yes.

Q. Was anyone else present when you had these experiments?

A. I think they were about all; I am not sure that all of them were present.

The COURT.—Q. I suppose some others might have been present?

A. Yes, some others might have been present; I am not sure that Stewart Campbell was with us at the time. He was not with us over a year; he left in August, 1904; that would make it that he was there in 1903. I am not sure whether he was there in 1902 or not.

Mr. WHITE.—Q. Now, indicate please on the floor plan here of the second floor of your cannery the room in which the girls peeled peaches in 1902?

A. This looks to me like the main floor, Mr. White.

Q. Don't you consider the first floor the basement?

A. No, that is the basement.

Q. The first floor?

A. This is what I took that you meant for the main floor.

The COURT.—Q. The one that you have already marked?

A. Yes.

Mr. WHITE.—Q. Isn't this first floor plan the plan in which the rooms in the basement are indicated, and where the engines and boilers were?

A. Not in 1902, no. [352]

(Testimony of Melville E. Dunkley.)

Q. On this floor plan does not the letter A indicate the engine and boiler-room in 1902? A. No.

Q. Where was it located?

A. In 1902 the boiler-room was only about that size.

The COURT.—Q. You mean the size marked by you now—at what end of the building is that?

A. That is at the northwest end.

Q. At the northwest end? A. Yes.

Mr. WHITE.—Q. That is toward South Haven, isn't it? A. That is toward the city.

The COURT.—Q. The building did not lay square with the points of the compass?

A. No, the building burned in 1912 completely; this drawing was evidently made I guess by someone that perhaps—

Q. —Somebody from memory?

A. Somebody from memory; they are perhaps as good as anyone could do; there are points in there which I would not want to swear to either one way or the other. This is the basement.

Mr. WHITE.—Q. That is the basement, the first floor plan? A. Yes.

Q. Now, was it in this basement and in this room where I have marked the letter B,—was that the place where these experiments were made in regard to the use of the caustic soda process?

A. These experiments that were shown to me were made on the main floor.

The COURT.—That is what he said before.

A. That is the second floor plan.

The COURT.—Do not get the basement mixed up

(Testimony of Melville E. Dunkley.)

with the main floor, because they are separate things.

A. Yes. This was set on a partial knoll, and this basement at [353] the east end was all under the surface, and here the basement was perhaps a foot below the level on account of the slope.

Q. What you call the basement was the space under the main floor?

A. Was the first grade of the building.

Mr. WHITE.—Q. The building was on a hillside?

The COURT.—On a slope.

A. Yes.

Mr. WHITE.—Q. And on this second floor plan which you have called the main floor will you indicate where these women were sitting in 1902 peeling peaches?

The COURT.—Just by crosses?

Mr. WHITE.—Indicate what you are marking.

A. Somewhere in here in 1902 there was a cold-storage room put in there which is not shown in here at all.

Q. As a matter of fact does not the letter X, indicate where that cold-storage room was in 1902?

A. No, not true, the cold storage had a circulating room set in here, then a corridor along here, and another door in here, and the doors from the corridor into the cold storage set about like that, within two or three rooms, and the circulating system there.

The COURT.—Mark that "C. S."

Mr. WHITE.—Q. Now, in what part of the cannery was this first machine for peeling peaches constructed, and by whom?

A. This first machine, I don't know just where it

(Testimony of Melville E. Dunkley.)

was constructed nor by whom it was constructed; it was constructed under the orders of myself and my father, and I saw it at different places in the factory during the process of construction which took some time.

Q. When did the construction of that first machine begin?

A. I should say in September, late September, 1902.

Q. You don't know to whom you gave directions to make that first machine? [354]

A. No; there were so many of the boys around there that were capable of putting that together, I could not say who I gave the instructions to; any one of these that I have named was capable of building it.

Q. You don't know who did build that first machine? A. No.

Q. Now, I hand you a photograph and ask you to state if the same is a photograph of the frame of that first machine which you said was built in 1902?

A. Yes.

Q. When was that machine completed?

The COURT.—Let me see that.

A. That machine was completed some time in November of 1902.

Mr. WHITE.—I offer in evidence the photograph just handed the witness and ask that it be marked Defendant's Exhibit "R."

(The photograph is marked Defendant's Exhibit "R.")

The COURT.—Q. What is that a photograph of?

A. Of the frame.

(Testimony of Melville E. Dunkley.)

Mr. WHITE.—Q. Where did you get the brushes which were used on this first machine?

A. I think those came from the Indianapolis Brush & Broom Factory; however, I am not sure.

Q. Will you state positively they did not come from Riddeford & Company of Chicago?

A. They may have; we have bought brushes from them.

Q. You are certain that these brushes were bought in the year 1902?

A. No; we have made brushes for those machines ourselves; it was built up mostly by things we had around in the factory.

The COURT.—Q. You mean this first one?

A. Yes.

Mr. WHITE.—Q. Where did you buy the pulleys for that first machine?

A. We were buying pulleys and had considerable of a stock of pulleys on hand; I do not think we bought pulleys anywhere; I think they were taken from factory stock. [355]

Q. What kind of gears were used on that first machine for transmitting power to the rotary brushes?

A. I think we put a set of bevel gears on that machine, although I think we experimented both with driving with bevel gears and in driving it with a turn-belt directly on to the brush from the pulley.

Q. Are you willing to state that the first machine was not driven by use of friction gears?

A. No, I would not say.

Q. As a matter of fact it was driven by a friction-gear, isn't that correct?

(Testimony of Melville E. Dunkley.)

A. I don't know; I could not say; I have an idea it was driven by gears, but as to the manufacture, the building of that machine, I could not remember.

Q. If it was driven by these friction-gears where were they obtained?

A. I could not tell; I am not inclined to think it was driven by friction-gears; it might have been tried out, but if tried out it was at a later date because we have never been partial to friction-gears around a cannery owing to the tendency to slip.

The COURT.—Q. What do you call friction-gears?

A. Friction-gears, are two pulleys or gears that have no teeth, which merely by their own friction turn, and in a canning factory where there is steam and water they are not efficient.

Mr. WHITE.—Q. Now I refer you to this photograph of this first machine and particularly to the set of gears appearing at the right-hand side of the machine, and at the far side thereof, and ask you what function those gears perform in the operation of that machine?

A. Well, I should say that that set of bevel gears was one that were put on there at sometime to perhaps drive the shaft, having the brushes.

Q. Can't you state what they were used for?

A. I have stated. [356]

Q. Do you state positively they were used for that purpose at any time? A. That is my opinion.

Q. Now, isn't it a fact that after these bevel gears were put on that machine they were never used for any purpose in the operation of that machine?

(Testimony of Melville E. Dunkley.)

A. Oh, no; I do not know of any reason why they should be put on if they were not.

Q. Are you willing to state positively that they were used in the operation of that machine after they were put on the same?

A. I would be perfectly willing to state if the gears were put on there they were used for some reason; I do not think we ever made any false moves of that kind, quite as bad as that.

Q. You are not willing to state they were used?

A. I think I did state so.

Q. Now, in connection with this first machine shown here in this photograph was there any lye-tank constructed?

A. No, not until the spring of 1903.

Q. Where did that lye-tank come from?

A. It came from the Clark Engine & Boiler Company.

Q. Did you ever get any other lye-tank from that company?

A. I don't remember whether we ever did, or not.

Q. Are you willing to state that you ever got any other lye-tank from the Clark Engine & Boiler Company?

The COURT.—Mr. White I do not like the form of your questions. The witness is willing to state whatever he will testify to, and it is not a kindly form of question.

Mr. WHITE.—I want to exclude the alternative, that is the proposition.

The COURT.—It is like asking a witness, do you

(Testimony of Melville E. Dunkley.)

want this jury to understand that you are swearing so and so; I never permit it. It is not a kindly form of question. [357]

Mr. WHITE.—I want to be certain.

The COURT.—You can be certain without putting your questions in that form.

Mr. WHITE.—Q. Did you ever buy from the Clark Engine & Boiler Company more than this one lye-tank which is used on one of these machines, as you say you remember in 1903?

A. Mr. White, I have an idea that we have purchased supplies and different items from the Clark Engine & Boiler Company for years, and I do not see any reason why we should not have bought them from them; however, I ran on to a letter this year from them regarding this tank in 1903 in which we had some controversy regarding the price; this first tank was a very small, simple tank, and we thought that the price was too high on it.

Q. That price was only \$57.40, was it not?

A. Yes.

Q. That is exactly the price of that, is it not?

A. I could not say that was exactly the price; we have the letter here, the invoice.

Q. But you think that was the price, do you?

A. I can tell you I believe. Have you that letter, Mr. Chappell?

Q. I would like to have you look at the letter and see if \$57.40, was the price you paid for that lye-tank? A. It was a very small one.

Q. Will you produce it this afternoon?

A. Yes.

(Testimony of Melville E. Dunkley.)

Q. Now, Mr. Dunkley, isn't it a fact that that lye-tank was not delivered by the Clark Engine & Boiler Company to the Dunkley Company at Kalamazoo until July 30, 1904?

A. No; that tank was delivered I am quite sure, Mr. White, in April, 1903; it was delivered to South Haven; we, no doubt, bought other tanks from the Clark people later.

Q. Did you or did you not buy any other tanks?

A. In 1904 we bought tanks; I could not say who from; then [358] we bought a number of them later. The letter which I found regarding the Clark first tank was the only record that I was able to find which refreshed my memory at all on that matter, and we afterwards went and looked at the invoice and at the same time found that you had been inquiring at the same place.

Q. Did you go to the Clark Engine & Boiler Company and look at their records? A. Yes.

Q. Did you find there that the order number for that tank was 9463?

A. I could not say as to the order number.

Q. What man of the Clark Engine & Boiler Company did you see in regard to that order for that tank?

A. I did not see anyone; I sent someone.

Q. Who did you send? A. From my office.

Q. Who did you send from your office?

A. I don't know just who I sent, Mr. White.

Q. Do you know when you sent that person to the Clark Engine & Boiler Company?

A. I sent before I left and did not succeed in get-

(Testimony of Melville E. Dunkley.)

ting the information I wanted, and then wired from here, and we have copies of the ledger page of the original invoice—photographic copies.

Q. Are you willing to state that that tank, the only tank you ever got from the Clark Engine & Boiler Company was not ordered on November 14, 1903?

A. There might have ben a tank ordered at that time, Mr. White; I would not be able to say.

Q. How did this tank that you say was used in connection with this first machine compare with the drawings of the patent in suit? Do these drawings correctly show the construction of that tank?

A. No, the first tank was very much simpler than this drawing; it was very much simpler than the drawings shown in the patent.

The COURT.—We will take a recess until 2 P. M.
(Recess was taken until 2 P. M.) [359]

AFTERNOON SESSION.

MELVILLE E. DUNKLEY, cross-examination, resumed:

Mr. WHITE.—Q. Mr. Dunkley, in interference No. 30,610 between Samuel J. Dunkley and H. A. Beekhuis, did you testify as follows regarding a photograph a duplicate of which has been introduced in evidence as Defendant's Exhibit "R," to wit: "Q. 228: I show you a photograph and ask you if you are able to recognize the same and tell me what it is?"

A. Yes, sir. It is a photographic of the frame and some parts of the original machine built during the summer of 1903, about which I have just testified?"

The WITNESS.—Yes.

(Testimony of Melville E. Dunkley.)

Q. When did William Brunker enter in the employ of the Dunkley Company, South Haven, and when did he leave?

A. He was in the employ of the Dunkley Company sometime during the years 1902, 1903 or 1904; otherwise I could not tell you; he was not there for any great length of time.

Q. You are not able to state then that he entered the employ of the Dunkley Company about April, 1903, and left the employ of that company at the end of October, 1903. Is that correct?

A. No, I am not able to state.

Q. Was this first machine shown in exhibit "R" ever commercially used? A. To some extent, yes.

Q. During what seasons?

A. During the fall of 1903.

Q. I draw your attention to the journal-box shown in this photograph in connection with the pulley, and ask you to state if the same is not an ordinary box hanger with the oil-cup at the side, so that the oil will not be retained in such a cup?

A. It has the appearance of such a journal.

Q. In your opinion would it be good mechanics to put such a [360] structure as that in a commercial device or would you consider that a mere temporary expedient for use in a model for experimental purposes?

A. This was built for experimental purposes.

Q. In other words, the device of that photograph, "R" was used in an experimental model?

A. It was used commercial however to a consid-

(Testimony of Melville E. Dunkley.)

erable extent in the fall of 1903.

Q. Was it ever used after 1903?

A. I think not.

Q. Are you sure? A. I am quite sure.

Q. During the summer of 1903, to wit, during the months of July and August, was there constructed in the South Haven Cannery of the Dunkley Company a peach-peeling table about 80 or 90 feet in length, having on either side platforms upon which could be located chairs in which the women peeling peaches could sit while they were hand-peeling peaches?

A. That table referred to was a conveyor-table having a belt arrangement to carry the peaches from the pitting machines for inspection by the workers and was built and equipped I think in 1904; there was no hand-peeling done on it.

Q. There was no hand-peeling of any kind done around that table in 1903?

A. I think that there might have been a bushel or two of peaches during the season that were handled that way, extra soft material.

The COURT.—Q. He is speaking about 1903. You say that this was built in 1904?

A. I am quite sure it was built in 1904.

Mr. WHITE.—Q. Now, Mr. Dunkley; isn't it a fact that the timber for that table was bought from the Doud Lumber Company in South Haven on July 7th and 8th, 1903?

A. I could not tell that for the simple reason that

(Testimony of Melville E. Dunkley.)

we were buying more or less lumber and material at all times. [361]

Q. Are you willing to state positively that the lumber for said table was not bought from that company on those dates?

The COURT.—You mean bought for that table or the lumber that was bought subsequently went into the table?

Mr. WHITE.—That lumber bought for that table, on those dates, for that particular purpose?

The COURT.—I want to know whether you mean was the lumber that went into that table bought at that time for the purpose of building this table or was it lumber bought at that time which subsequently went into that table?

Mr. WHITE.—The first part of your Honor's statement is what I mean, was that lumber bought at that time for that table?

The WITNESS.—I could not say regarding any of the details of the lumber that was bought at that time.

Q. Where are the books of the Dunkley Company?

A. I will have to go back to explain that. As I said before in 1908 the fruit industry of South Haven and vicinity was completely destroyed, absolutely destroyed; there was not anything left but a very few apple trees and some peach trees in what was one of the most prosperous fruit belts of the United States; that of course was a blow that could not be appreciated unless you are in it. In 1907 the panic came, and in 1908 the Dunkley Company went into bank-

(Testimony of Melville E. Dunkley.)

ruptcy, and for a year its affairs were completely demoralized, so that the records of these transactions have been more or less destroyed, so that I would be unable to say regarding that.

Q. Have you no records whatever showing the purchase of any parts for this first experimental model machine or the first commercial machine?

A. The only record we have at the present time on this first machine covers the purchase of the first [362] simple experimental tank that was built, that was used with this in 1903; otherwise we have practically no records left. What few records were left were at South Haven covering the transactions of the factory work at South Haven, and were burned when we had a complete fire loss in 1912.

Q. When was work commenced on this second machine which was built in 1903, according to your testimony?

A. Some time during the summer of 1903; I could not tell definitely as to that.

Q. Is that second machine disclosed in these two photographs which I hand you now? A. No.

Q. Are any parts of that second machine shown in these two photographs? A. Yes.

Q. What parts?

A. I would be unable to tell exactly what parts; that machine was rebuilt from the second machine built.

Mr. WHITE.—Defendant offers in evidence these two photographs, and asks that they be marked “De-

(Testimony of Melville E. Dunkley.)

fendant's Exhibit 'S,' Photographs of Second Dunkley Machine."

(The photographs were marked "Defendant's Exhibit 'S,' Photographs of Second Dunkley Machine.")

Q. Who made the drawings for this second machine? A. That I would be unable to say.

Q. Who worked on that second machine?

A. That I would be unable to say.

Q. Where was that second machine built?

A. At South Haven, to the best of my belief.

Q. When was it completed?

A. Early in the fall or late in the summer of 1903.

Q. In what months do you mean?

A. In August or September. [363]

Q. Who operated that second machine during the peach season of 1903? A. That I could not say.

Q. Did William H. Freese operate it?

A. I don't remember William H. Freese.

Q. Wasn't he employed at the cannery of the Dunkley Company in 1904?

A. I do not remember him.

Q. Are you willing to state that William H. Freese did not operate that second commercial machine during that season at that cannery?

A. I don't remember Mr. Freese at all.

Q. Where did the gears come from which were used in the second commercial machine?

A. I am unable to state.

Q. Are you willing to state that these gears which were used in that second commercial machine were

(Testimony of Melville E. Dunkley.)

not purchased from the Boston Gear Works of Boston, Massachusetts?

A. We bought lots of gears from the Boston Gear Works.

Q. In the month of December, 1903, did you buy a lot of gears from the Boston Gear Works?

A. I could not tell you.

Q. Are you willing to state you did not?

A. No. We bought gears from the Boston Gear Works for years.

Q. Are you willing to state—

The COURT.—I do not want you to pursue that form of question.

Mr. WHITE.—I beg your Honor's pardon.

The COURT.—I do not like the form of the question. Just ask him what the fact is.

Mr. WHITE.—Yes.

Q. Where was the tank purchased for this second commercial machine?

A. I am unable to state.

Q. Was it purchased from the Clark Engine and Boiler Works of Kalamazoo?

A. It might have been. [364]

Q. Where were the chains bought for this second commercial machine which were used in the tank?

A. I am unable to state.

Q. Do you know whether or not they were bought from the Jeffery Company of Chicago?

A. We bought so many things from Jefferys and these other people for years, that I would be unable to state anything regarding any definite thing.

(Testimony of Melville E. Dunkley.)

Q. Where were the brushes bought for that second commercial machine? A. I am unable to state.

The COURT.—You mean the second commercial machine or the first commercial machine?

Mr. WHITE.—The first commercial machine; do you know whether or not they were bought from Riddeford Brothers of Chicago?

A. They might have been, but I am unable to state.

Q. Where was the caustic soda bought which was used in the year 1903 in connection with the peeling of peaches that year?

A. I am unable to state that.

Q. Are the patent drawings of the patent in suit based upon the construction of that first commercial machine?

The COURT.—Where is the patent. Is this it?

Mr. WHITE.—This is it.

A. Yes, I think they were based upon the first commercial machine.

Q. When were those patent drawings made, and where? A. I could not say.

Q. Do you know by whom?

A. They were made I should judge by the patent attorney's office.

Q. You suppose they were made shortly before the patent was applied for, to wit, shortly before November 29, 1904? A. I am unable to say.

Q. At that time, that is, the first of November—
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The COURT.—Is this the patentee?

Mr. WHITE.—No, your Honor.